

ACCOUNTABILITY AND IDEA: WHAT HAPPENS WHEN THE BUS DOESN'T COME ANYMORE?

HEARING

BEFORE THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

EXAMINING THE IMPLEMENTATION OF THE INDIVIDUALS WITH DIS-
ABILITIES EDUCATION ACT, FOCUSING ON ACCOUNTABILITY FROM
THE FEDERAL GOVERNMENT, AND A COLLABORATION BETWEEN IN-
STITUTIONS OF HIGHER EDUCATION, LOCAL SCHOOLS, AND SCHOOL
FACULTIES FOR TEACHER PREPARATION PROGRAMS

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C O N T E N T S

STATEMENTS

THURSDAY JUNE 6, 2002

	Page
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts ...	00
Dodd, Hon. Christopher J., a U.S. Senator from the State of Connecticut	00
Jeffords, Hon. James M., a U.S. Senator from the State of Vermont	00
Reed, Hon. Jack, a U.S. Senator from the State of Rhode Island	00
Clinton, Hon. Hillary Rodham, a U.S. Senator from the State of New York	00
Gregg, Hon. Judd, a U.S. Senator from the State of New Hampshire, prepared statement	00
Brown, Marisa C., Parent, Vienna, VA	00
Gordon, David W., Superintendent, Elk Grove Unified School District, Elk Grove, CA	00
Shaw, Stan, Ed.D., Professor and Coordinator, Special Education Program, University of Connecticut, Storrs, CT	00
Mayerson, Arlene, Directing Attorney, Disability Rights Education Defense Fund, Inc., Berkeley, CA	00
Gloeckler, Lawrence C., Deputy Commissioner, Vocational and Educational Services for Individuals with Disabilities (VESID), New York State Education Department, Albany, NY	00

ADDITIONAL MATERIAL

Statements, articles, publications, letters, etc.:	
Vernon, Nancy, prepared statement	00

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THURSDAY, JUNE 6, 2002

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, D.C.

The committee met, pursuant to notice, at 9:40 a.m., in room SD-430, Dirksen Senate Office Building, Senator Kennedy (chairman of the committee) presiding.

Present: Senators Kennedy, Dodd, Jeffords, Reed, and Clinton.

OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. We will come to order.

I understand we have some very special guests here. They just happen to be from Massachusetts and from Salem State. Do they want to just stand up so I can see you all? We are grateful and hope you will enjoy the hearing.

Today's hearing is on the steps that we must take to bring the promise of the Individuals with Disabilities Education Act to every disabled child in America. With the enactment of the Education for the Handicapped Act in 1975 and the later passage of IDEA, we opened the schoolhouse doors to millions of students with disabilities. We said it is the law of the land that children with disabilities must have the opportunity to learn alongside their non-disabled peers and ultimately live independent and productive lives.

Before that time, more than a million children with disabilities received no educational services at all, and countless others remain unaccounted for. IDEA reversed those outdated and inappropriate policies and practices that hindered the progress of children with disabilities.

But we still have a long way to go. Education is a civil right for every child in America, including those with special needs. As this committee considers the reauthorization of IDEA this year, our work on this reauthorization bill will be based on three important principles: accountability, quality, and coordination.

Our hearing today will focus on the importance of an accountable educational system that ensures that children with disabilities receive their civil right to a free and appropriate public education. Although children with disabilities now have a guarantee to an education, they do not always receive the quality of education they deserve to succeed in school or in later life.

We must work to improve the implementation and enforcement of this law so it focuses on educational results and is accountable

for delivering the level of academic support and instruction that children with disabilities need to succeed. We must work to do better to improve the academic outcomes of children with disabilities.

An accountable education system must also provide the supports and services needed for disabled students to successfully transition from school to employment or higher education later in life. In order to do this, we must ensure greater high school completion, begin working with students and their families early in their high school years to develop a career plan, and strengthen the relationship between schools and vocational rehabilitation programs to provide greater opportunities for postsecondary employment and education.

The foundation of a strong and accountable educational system for disabled students also relies on ensuring highly qualified and well-trained personnel to support the learning of children and provide good instructions. We are facing the familiar challenges of teacher recruitment, training, and retention in reaching our goal of ensuring a highly qualified teacher for all students with disabilities.

The special education teaching force has doubled in two decades thanks to Federal assistance provided through IDEA. However, too many of our general education teachers still lack the training necessary to serve students with disabilities, and too many school districts across the country are in need of special education teachers. In fact, by the year 2005, we will face a shortage of 200,000 special education teachers—200,000 special education teachers. Enormously important.

Most importantly, schools need the financial resources to do their job. It is time for the Federal Government to be accountable, meet the goal to fully fund IDEA at the 40 percent promise. It has been over 25 years since that promise was made. It is high time to fulfill it. Fully funding IDEA moves us closer to ensuring the success of every child by supporting the goal of public education to give all children the opportunity to pursue their dream.

We are fortunate today to have knowledgeable witnesses from across the country to offer their insights on how to improve our special education system. We are looking forward to hearing from the witnesses.

I would ask, Senator Reed, if you wanted to say a brief word?

Senator REED. No, Mr. Chairman. I just want to commend you on this hearing. It is important, and I am looking forward to hearing the witnesses.

Thank you.

The CHAIRMAN. We are joined by Senator Jeffords, who was the real architect of the original legislation in the House of Representatives, and who has been long committed and has demonstrated his commitment on this by exercising extraordinary moral courage in recent times, and at other times. Would you like to say a word?

Senator JEFFORDS. I appreciate the remarks very much and am looking forward to the testimony. I am so anxious to hear the testimony that I will not have any opening statement.

The CHAIRMAN. Fine. Good.

PREPARED STATEMENT OF SENATOR GREGG

Mr. Chairman, I appreciate your holding this hearing today, which will include very important discussions about the issues of accountability and transition services in the IDEA law. It is my desire that our Federal policies on special education hold schools accountable for ensuring that disabled students receive the education and services they need to succeed and become educated and productive citizens when they leave high school.

Earlier this year, we heard from the National Council on Disability that every State and the District of Columbia is out of compliance with IDEA requirements. This led Assistant Secretary Pasternack, testifying before this Committee, to ask whether "it is possible that we have constructed a statute and regulations where no State can be in compliance." Do the statute and regulations make it impossible for any State to be in full compliance?

I seriously doubt that States and school districts are failing to comply with all of the 1997 provisions because they do not want to assist disabled students. Rather, the lack of full compliance is most likely the result of a cumbersome, complicated, procedural driven statute and regulations.

I would also ask another question: When we talk about compliance and accountability with IDEA, what are we holding schools accountable for? Are we measuring the right things?

Assistant Secretary Pasternack told us that he believes we are too focused on process and not enough on student progress. In addition, we heard testimony from a special education director who explained that the process and the paperwork requirements of IDEA actually impair the ability of districts and teachers to deliver the best educational services.

This is disturbing to me. The emphasis on paperwork and process has taken the focus away from improving the educational outcomes of disabled students. Educators don't merely complain about the emphasis on process, they assert that the overemphasis on process has hampered or taken away from focusing on and improving academic achievement of students with disabilities.

So it appears that IDEA holds States and districts accountable for complying with process, but not for improving student outcomes.

Let me give you a tragic example of this. A recent article in *Education Week* describes the woes of the Baltimore public school system's special education services. According to the article, despite massive efforts and prolonged U.S. District Court supervision since the mid-1980s, Baltimore's special education program "is still squandering too much time and money on paperwork and bureaucracy at the expense of better instruction." While the Baltimore school system has "met or exceeded the mandates of the IDEA and court-imposed procedural dictates," its special education students "aren't coming close to achieving their academic potential."

We need to review carefully the current IDEA law and find ways to change this misplaced emphasis on form, and change the focus to substance: measuring student improvement. As one of our witnesses, Mr. Gloeckler, says in his written testimony, "the primary

concern of families and schools should be the achievement of successful outcomes by students." I couldn't agree more.

It is also important that our Federal special education law generates high expectations for our special education students. This was a major theme in the No Child Left Behind Act, and we should carry this theme over into the IDEA law. While special education students obviously have challenges that have necessitated their need for IDEA services, we have done them a disservice by failing to have high expectations of them. Children of nearly all abilities respond well when they know that people believe they can achieve. The IDEA law must reflect this principle of high expectations for all our children to succeed.

Mr. Chairman, many school representatives, policy analysts, and even some parents of disabled children believe that the current accountability provisions in the IDEA law focus more on measuring compliance with legal processes, rather than gauging student performance and results.

While they may be well-intended, the process-oriented aspects of IDEA do not relate to improving the performance of students with disabilities, but are often a hindrance to improving academic achievement. We need to reform IDEA so that schools are judged on student progress and outcomes, rather than on compliance with overly complex due process rules and meaningless reporting requirements that don't lead to academic improvement.

I thank our witnesses for being here today and look forward to hearing their testimony.

The CHAIRMAN. So we will start in with our panel, and it is an outstanding one.

For 15 years, Marisa Brown has been an advocate for individuals with developmental disabilities. Her volunteer activities and roles have included serving as Chair of the Virginia State Special Education Advisory Committee. Professionally, Ms. Brown is a registered nurse and research instructor in the Department of Pediatrics at Georgetown University Medical Center. However, Ms. Brown comes today as a mother of three young adults, one who experiences Asperger syndrome, a form of autism. We thank her for coming and sharing her family's personal experience with IDEA.

David Gordon is superintendent of the Elk Grove Unified School District in Sacramento, California. Elk Grove serves 50,000 students of diverse ethnic and economic backgrounds and is one of the fastest-growing districts in the Nation. Mr. Gordon's experience as an educator spans 30 years. He started his career as a teacher in South Bronx, New York. Since then he has had various positions with the California State Department of Education. Most recently, he was deputy superintendent of public instruction.

Dr. Stan Shaw is a professor and coordinator of special education program, Department of Educational Psychology at the University of Connecticut. Dr. Shaw's work focuses on professional development for postsecondary disability personnel, services for college students with disabilities, transition, disability policy and law, and teacher education. He is also co-director of the Center on Postsecondary Education and Disability. As co-director he works towards implementing universal design and instruction to improve college access for students with disabilities. He is also the coordina-

tor of the University of Connecticut's annual Postsecondary Learning Disability Training Institute.

Arlene Mayerson has been the directing attorney for DREDF since 1981. She has dedicated her career to disability rights law. She has advised Congress on major disability rights legislation for two decades, including Americans with Disabilities Act and Handicapped Children's Protection Act. Ms. Mayerson has also appeared before the U.S. Supreme Court on key disability rights cases. In addition to her position at DREDF, Ms. Mayerson is currently a lecturer on disability law at the University of California, Berkeley.

Finally, Lawrence Gloeckler is the deputy commissioner of Vocational and Educational Services for Individuals with Disabilities, New York State Education Department. In his position, he serves as both New York State's director of special ed. and State director of vocational rehabilitation. Mr. Gloeckler has worked in special education at both the local and the university level and has been president of the National Association of State Directors of Special Education. This organization recognized him with the Heritage Award, which recognizes outstanding contributions to special education.

We truly have an extraordinary panel here this morning, and we are very, very grateful to all of them, and we will ask if they will proceed in the order that they were introduced.

Ms. Brown.

STATEMENT OF MARISA C. BROWN, PARENT, VIENNA, VA

Ms. BROWN. Thank you, Senator Kennedy. Senators Kennedy, Jeffords, and Reed, thank you very much for your interest and dedication to this very important issue.

In 1990, when my son Paul was 9 years old, I read a report about the academic achievement of students with serious behavioral and emotional problems. What I read was chilling. In one study, no more than 30 percent of the students were found functioning at or above grade level in any academic area. Another study cited that students were reading below grade level, with deficits becoming more extreme the older the youth.

In the same study, 55 percent of the sample of students identified as having a behavioral or emotional disability dropped out of school altogether as compared to 36 percent for all other disabilities. In 1989, only 63 percent of these students were engaged in productive activities defined as schooling, working for pay, volunteering, or receiving job skills training. Interestingly enough, in light of current expectations, the Personal Responsibility Work Opportunity and Reconciliation Act of 1996, the majority of these activities measuring post-school success would not count.

I vowed that my son would not fall victim to these statistics. Paul was already aware that his class would graduate from high school in the year 2000, and we made that our personal goal. Unfortunately, when Paul turned 18, he withdrew from school. At that point, he had our full support to do so because we had become so frustrated in our inability to ensure the school system's accountability for the services for which my son had been found eligible.

There are several points I will make as it relates to accountability based on our family's experiences: First, the importance of aca-

ademic preparation; second, the importance of keeping kids in school; and, finally, the need to strengthen transition planning and services.

Academic preparation: Paul's IQ scores have always indicated that he has the ability to complete grade level work. He was placed in four different high schools in the 4 years that he attended secondary level schools. Two of those schools were regular high schools where Paul received more than 50 percent of his instruction in segregated classrooms. The other two schools were very restrictive placements in which only students that had been found eligible as students with serious emotional disabilities were admitted.

What should students and parents expect in terms of academic rigor when students are placed in such settings? One would think that the ability to provide specialized instruction should be possible given the special nature of the setting, the smaller class size, and a setting fairly rich in resources to provide related services. Our experience was that the academic program was secondary to efforts to alter Paul's disability. Schools must be accountable for delivering the academic information to students that they need to fulfill post-secondary school objectives.

Keeping students in school: School systems are being given new expectations to ensure that students meet certain prescribed academic standards. It is more important than ever to be sure that students are, in fact, in school and able to benefit from academic instruction. Schools certainly need to be able to discipline students in a reasonable manner. However, it has been our experience that schools too often use suspension, both in school and out of school, to discipline students. For my child, suspension was used so often that it actually began to reinforce the very behavior that the teachers were trying to extinguish.

What our family has learned over the past 20 years is that the only way to ensure maintaining a child's dignity and availability for learning is to implement positive approaches. For students to be found eligible for special education services, it must be demonstrated that their needs go beyond the needs of typically developing children. So children and youth with disabilities very often are struggling with nervous systems that render them impulsive, anxious, unable to interpret subtle and not to subtle social cues, and unable to process language efficiently and accurately.

A great deal has been studied and written about positive behavior support strategies. The IDEA reauthorization of 1997 wisely included language that asserted protections for children with significant behavioral disruptions to benefit from functional behavioral assessments. However, there needs to be accountability that these tools are used in a timely manner and that they are used to support a student to benefit from instruction that has been individually designed to meet their learning needs.

Transition planning: I have a lot of information at my disposal about the transition to adult life because of my professional work and because I am a naturally inquisitive person. We were able to access vocational assessment and job coaches for Paul because I knew to ask and push. When Paul made his first visit to the Department of Rehabilitation Services, we were told that students from his school rarely were ever referred, although at the time he

was in a school that solely served students with serious emotional problems.

Parents and students need to be exposed to good information about transition planning, and States need to be given incentives to provide at least a modicum of services to young adults who have been labeled with a disability all of their lives but now are placed on waiting lists for services that do not exist. I view the fact that Paul had to withdraw from high school and pursue a GED as the biggest failure in his transition plan. Paul had to forego the opportunity of classroom instruction and the opportunity to fulfill his personal goal of graduating in the class of 2000. My family is well resourced emotionally and educationally. We have worked diligently during the time that Paul was a student to provide him additional resources to enrich his experiences. I feel that we have fulfilled our responsibilities. Where is the accountability that services agreed upon in students' IEPs will be carried out in a good-faith effort?

In summary, I don't know that people's attitudes can be legislated. But make no mistake: attitudes are influenced by the strength of legislation and by the protections that the legislation provides. It has only been 25 years that children with disabilities have been afforded the civil rights protection of a free and appropriate public education. While that is a brief period in our history, that equals more than two full generations of students passing through our public schools. Please ensure that the legislation is tough and clear and that appropriate resources are allocated so that truly no child will be left behind.

Thank you.

[The prepared statement of Ms. Brown follows:]

PREPARED STATEMENT OF MARISA C. BROWN

In 1990, when my son Paul was 9 years old, I read a report entitled "At the Schoolhouse Door: An Examination of Programs and Policies for Children with Behavioral and Emotional Problems" by Jane Knitzer. What I read about the academic achievement of students with serious behavioral and emotional problems was chilling:

A study of 249 BED students, aged 9-17 found that no more than 30% were functioning at or above grade level in any academic area, with deficits more severe the older the students (Kauffman et al., 1987).

Another study of over 700 students, also between 9-17 found remarkable parallel data. Seventy-three percent of the sample were reading below grade level, again, with deficits more extreme among the older youth (Friedman et al., 1988).

A study focused on high school students with identified behavioral and emotional problems found that 45 percent had failed at least one course; 18 percent had failed six or more courses (compared with 8 percent of learning disabled youth). Just over one-third were able to pass the entire minimum competency tests, compared with close to half of the learning disabled students. Twenty-three percent failed it completely.

This report went on to state that in 1989, 55 percent of the sample of students identified as having a behavior or emotional disability dropped out of school all together as compared to 36 percent for all other disabilities. Additional data reported on what happened to students once they exited school was equally disturbing. In 1989, only 63 percent of these students were engaged in productive activities including postsecondary schooling, working for pay, volunteering or receiving job skills training. Interestingly enough, in light of current expectations of the Personal Responsibility Work Opportunity and Reconciliation Act of 1996, the majority of these activities measuring post-school success would not count!

I vowed that my son would not fall victim to these statistics. Paul was already aware that his class would graduate from high school in the year 2000, and we

made that our goal. Unfortunately, when Paul turned 18, he withdrew from school. At that point, he had our full support to do so because we had become so frustrated in our inability to ensure the school system's accountability for the services for which my son was found eligible.

Paul's experience as a student who received services under the eligibility of serious emotional disability has some unique aspects. However, there are several points I will make as it relates to accountability based on our experiences. First, the importance of academic preparation, second, the importance of keeping kids in school, and finally, the need to strengthen transition planning and services.

Academic preparation: Paul's IQ scores have always indicated that he has the ability to complete grade level work. He has learned to read fairly efficiently, can read for pleasure, and was able to pass a driver's education course and the State-administered written test. He can make change, understand the basic principles of personal banking, and complete simple Algebra. In high school, Paul passed Algebra I, but left school while taking Geometry. During the academic year that he was studying Geometry, he was moved from a general education classroom where he received special education services to a self-contained class with two other students. The rationale for this move was that Paul needed more support because he was falling behind in the general education classroom. I was stunned to find out from Paul one week following this move that his teacher was "waiting for the other two students to catch up to where Paul was." When I spoke to the teacher, he confirmed this information. I asked if the other two students were on schedule to take the State Department of Education assessment, because I did not think that Paul could afford to review information if he needed to progress in his learning. Certainly with three students and a certified teacher, Paul should have been able to receive whatever specially designed instruction he needed in the general education curriculum. Where was the accountability here?

Paul was placed in four different high schools in the 4 years that he attended secondary level schools. Two of those schools were regular high schools, where Paul received more than 50 percent of his instruction in segregated classrooms. The other two schools were very restrictive placements in which only students that had been found eligible as students with serious emotional disabilities were admitted. What should students and parents expect in terms of academic rigor when students are placed in such settings? One would think that the ability to provide specialized instruction should be possible given the special nature of the setting, the smaller class size and a setting fairly rich in resources to provide related services. Our experience was that the academic program was secondary to efforts to alter the student's disability.

Schools must be accountable for delivering the academic information to students that they need to fulfill post-secondary school objectives.

Keeping students in school: School systems are being given new expectations to ensure that students meet certain prescribed academic standards. It is more important than ever to be sure that students are, in fact, in school and able to benefit from academic instruction. Schools certainly need to be able to discipline students in a reasonable manner. Rules are essential to an orderly and productive society, of which I want my child to be a part. However, it has been our experience that schools too often use suspension, both in school and out of school, to discipline students. Again, I want to emphasize, that while this is necessary in some cases, it is too frequently used in the absence of more effective strategies, and to simply get rid of the problem, rather than solving its root cause. For my child, suspension was used so often, that it actually began to reinforce the very behavior that the teachers were trying to extinguish. Suspension became a way for Paul to escape a situation that was very difficult for him, and he quickly learned how to ensure swift suspensions, and ones that would last more than one day!

Efforts that deal effectively with behaviors that get in the way of learning need to be rooted in practices that are known to be successful. My husband and I have had to learn strategies that not only teach Paul, but that can be implemented within some broad definition of "typical" family life. We have not had the luxury of calling someone to come and take Paul away from the home environment over the weekend as I was so frequently called to take Paul home from school, or to keep him home in the first place!

What we have learned over the past 20 years is that the only way to ensure maintaining a child's dignity and availability for learning is to implement positive approaches. Kids will make mistakes, we all do. In fact, just as their adult counterparts do, kids even deliberately do certain things to annoy people and gain attention. But more importantly, we also know that for students to be found eligible for special education services, they need to demonstrate that their needs go beyond the needs of typically developing children. So, children and youth with disabilities very

often are struggling with nervous systems that render them impulsive, anxious, unable to interpret subtle and not-so-subtle social cues, and unable to process language efficiently and accurately. A great deal has been studied and written about positive behavior support strategies. The IDEA reauthorization of 1997 wisely included language that asserted protections for children with significant behavioral disruptions to benefit from functional behavioral assessments. However, there needs to be accountability that these tools are used in a timely manner, and that they are used to support a student to benefit from instruction that has been individually designed to meet their learning needs.

Transition planning and services: Paul is currently making a successful transition to adult life. He has a driver's license, makes monthly payments on a car, is employed and attends classes at Northern Virginia Community College. He is aware of his disability and how it impacts his life, and can explain it to people very accurately. He has an ever-widening circle of friends and many people in our community know him. This transition has also made us aware of the adjustments in expectations that we have had to make. Paul had initially intended to major in the veterinary technician program at the community college. His vocational assessment that was completed as part of the transition plan on his IEP indicated that this was a realistic expectation. He had passed his math and science classes in high school and the GED. However, once he was attending classes at the community college, we became aware that Paul lacked some fundamental math and science skills to be successful. Even with individual tutoring that we provided for Paul, he needed to rethink his career plans.

Paul is currently earning minimum wage at a movie theater. He loves to work, enjoys his co-workers, and takes advantages of all of the perquisites such as free movie passes. But Paul is still under-employed for his ability, and will not be able to live independently earning only the minimum wage. Although Paul has held various jobs since he was 16 years old, it is still very difficult to discern if, when and how he should disclose the nature of his disability to potential employers. He is currently seeking services through the Virginia Department of Rehabilitation Services to assist him with additional vocational assessment and job supports.

I have a lot of information at my disposal about the transition to adult life because of my professional work and because I am a naturally inquisitive person. We were able to access vocational assessment and job coaches during Paul's high school years because I knew to ask and push. When Paul made his first visit to the Department of Rehabilitation Services office as a high school student, he was attending a school that only served students with disabilities. One would think that these students would be in particular need of good transition planning. The vocational counselor remarked to me that they hardly ever got the opportunity to counsel students from that school, because no one thought to refer them!

Parents and students need to be exposed to good information about transition planning. States need to be given incentives to provide at least a modicum of services to young adults who have been labeled with a disability all of their lives, but now are placed on waiting lists for services that do not exist.

I view the fact that Paul had to withdraw from high school and pursue a GED as the biggest failure in his transition plan. Paul had to forgo the opportunity of classroom instruction and the opportunity to fulfill his personal goal of graduating in the class of 2000. My family is well resourced emotionally and educationally, and my husband and I are privileged to be well compensated for the work that we do. If our son had to drop out of school, is it any wonder that we are leaving so many children behind? My husband and I have worked diligently over the period of time that Paul attended school to be sure that he came to school ready to learn. We provided him with a stable family and additional resources such as tutoring, music lessons, and other organized activities to enrich his experiences. I feel that we have fulfilled our responsibilities. Where is the accountability that services agreed upon in students' IEPs will be carried out in a good faith effort?

I don't know that people's attitudes can be legislated. But make no mistake; attitudes are influenced by the strength of legislation, and by the protections that the legislation provides. It has only been 25 years that children with disabilities have been afforded the civil rights protection of a free and appropriate education. While that is a brief period in history, that equals more than two full generations of students passing through our public schools. Please ensure that the legislation is tough and clear, and that appropriate resources are allocated so that truly, no child will be left behind.

Recommendations:

1. Require adequate training in positive behavioral supports at the pre-service level for all education majors.

2. Just as clear guidelines are followed for the eligibility of students to receive special education services, clear guidelines must be developed and adhered to that ensure that students are able to gain the academic, vocational and independent living skills they need to progress through secondary school.

3. Language needs to be inserted to ensure that functional behavioral assessments and positive behavioral support plans are addressed for all students as identified in their present level of performance, not only required once students have exhibited a behavior that results in suspension or expulsion.

4. Adolescents and their families must be actively engaged in transition planning.

5. States need to be given incentives to provide adequate services and supports that can make the transition to adult life a viable reality.

6. Legislative and regulatory language needs to be stronger in support of meeting the needs of students with disabilities.

The CHAIRMAN. Thank you very much.
Mr. Gordon.

STATEMENT OF DAVID W. GORDON, SUPERINTENDENT, ELK GROVE UNIFIED SCHOOL DISTRICT, ELK GROVE, CA

Mr. GORDON. Mr. Chairman and members, thank you for inviting me to appear today to address an issue that is critical to my school district and our Nation—accountability in special education.

My district serves 50,000 students in the southern third of Sacramento County, California. Our student population is wonderfully diverse—reflective of all of California and of the emerging America. We have 37 percent white students and 63 percent minority students. Our students speak more than 80 languages and dialects.

We have worked hard over the past 10 years to improve our special education program and be sure we are focusing our dollars on students who need services the most. For example, 10 years ago, 16 percent of our student population was enrolled in special education. Many of these children were not really learning disabled. They simply had not been taught to read. So we instituted an aggressive early intervention program, begun not in grades 3, 4, and 5 where services previously began, but in grades kindergarten, 1, and 2 where we could catch learning problems early.

As a result, our special education population has dropped from the 16 percent of 10 years ago to just under 9 percent today—not because we “kicked children out” of the program, but because we prevented the need for them to be referred in the first place. And the students who were not referred and remained in the regular program are today performing very well compared to their peers.

This is but one example—when we talk about accountability—of an indicator the current compliance monitoring system—

The CHAIRMAN. Excuse me. Which children are responding very well in comparison to peers? The 9 percent now or the others that were moved?

Mr. GORDON. The others that were not needed to be put in the program in the first place.

The CHAIRMAN. I see. Okay.

Mr. GORDON. This is but one example—when we talk about accountability—of an indicator the current compliance monitoring system doesn’t look for or even acknowledge. The sad fact is that our current monitoring system has a voracious appetite for procedural minutiae and little or no interest in the real bottom line—whether or not students are achieving or accomplishing more as a result of the programs we offer.

Consider the results of the study conducted by the Abell Foundation in Baltimore City. It found that the district was doing quite well in complying with procedural requirements. The district even had a judicial consent decree that added even more procedural requirements. But the performance of students in the district was dismal and not improving. And, worse, the focus of staff efforts was not on sharpening instruction and assessment, but on generating further compliance reviews and audits. To quote the study's summary: "...the time and money currently spent on unnecessary paperwork and bureaucracy are desperately needed to improve academic outcomes. The excessive focus on compliance diverts attention from instruction, impedes the essential integration of Special Education and General Education, saps morale and makes it harder to recruit and retain Special Education teachers."

So what is the answer? First, let's dramatically scale back useless and redundant compliance reviews and paperwork to allow more time to focus on instruction.

Second, let's not be afraid to set high standards for our special education students. The No Child Left Behind Act started the process by requiring reporting of student performance data on children with disabilities.

Why shouldn't we expect more of all our children—even those with severe disabilities—and routinely measure their performance—just as we do for general education students?

Third, let's hold me and my colleagues and States and districts throughout the Nation accountable for results by instituting systematic evaluation and reporting systems to let parents and the public know what outcomes we are achieving for students in special education.

Thank you.

[The prepared statement of Mr. Gordon follows:]

PREPARED STATEMENT OF DAVID W. GORDON

Mr. Chairman and Members of the Committee, thank you for inviting me to appear today to address an issue that is critical to my school district and our Nation—accountability in special education.

My district serves 50,000 students in the southern third of Sacramento County, California. Our student population is wonderfully diverse—reflective of all of California and of the emerging America—37 percent white and 63 percent minority. The students speak more than 80 languages and dialects.

We have worked hard over the past 10 years to improve our special education program and be sure we are focusing our dollars on students who need services the most. For example, 10 years ago, 16 percent of our total student population was enrolled in special education. Many of these children were not really learning-disabled. They simply had not been taught to read. So we instituted an aggressive early intervention program, begun not in grades 3, 4, and 5 where services previously began, but in grades K, 1, and 2 where we could catch learning problems early.

As a result, our special education population has dropped from the 16 percent of 10 years ago to just under 9 percent—not because we "kicked children out" of the program, but because we prevented the need for them to be referred in the first place. And the students who were not referred and remained in the regular program are performing very well compared to their peers.

This is but one example—when we talk about accountability—of an indicator the current compliance monitoring system doesn't look for or even acknowledge. The sad fact is that our current monitoring system has a voracious appetite for procedural minutiae and little or no interest in the real bottom line—whether or not students are achieving or accomplishing more as a result of the programs we offer.

Consider the results of the study conducted by the Abell Foundation in Baltimore City. It found that the district was doing quite well in complying with procedural

requirements. The district even had a judicial consent decree that added even more procedural requirements. But the performance of students in the district was dismal, and not improving. And worse, the focus of staff efforts was not on sharpening instruction and assessment, but on generating further compliance reviews and audits. To quote the study's summary: ". . . the time and money currently spent on unnecessary paperwork and bureaucracy are desperately needed to improve academic outcomes. The excessive focus on compliance diverts attention from instruction, impedes the essential integration of Special Education and General Education, saps morale and makes it harder to recruit and retain Special Education teachers."

So, what's the answer? First, let's dramatically scale back useless and redundant compliance reviews and paperwork to allow time to focus on instruction. Second, let's not be afraid to set high standards for our special education students. The "No Child Left Behind" Act started the process by requiring reporting of student performance data on children with disabilities.

Why shouldn't we expect more of all our children—even those with severe disabilities—and routinely measure their performance—as we already do for general education students?

Third, let's hold me and my colleagues in States and districts throughout the Nation accountable for results by instituting systematic evaluation and reporting systems to let parents and the public know what outcomes we are achieving for students in special education.

The CHAIRMAN. Very good. Senator Dodd, do you want to introduce Mr. Shaw?

Senator DODD. Dr. Shaw, welcome. We are very pleased to have you with us. You have a very distinguished record and history at the University of Connecticut, and I am particularly interested in hearing your comments about teacher development and your long-term work to develop curricula as well as field experiences to enhance teachers' abilities. The University of Connecticut is justly proud of the work that you have done, as we all are. So it is an honor to have you here this morning to talk about these issues.

STATEMENT OF STAN SHAW, ED.D., PROFESSOR AND COORDINATOR, SPECIAL EDUCATION PROGRAM, UNIVERSITY OF CONNECTICUT, STORRS, CT

Mr. SHAW. Thank you, Senator Dodd, Chairman Kennedy, members, for this opportunity to talk with you about reauthorizing IDEA. I would like to note that I am a member of the Higher Education Consortium for Special Education, which is an organization of doctoral programs in special education from around the country. Later I would like to submit these two policy papers for your information.

I have been privileged to serve students with disabilities for more than 35 years. I can still vividly recall when students were not guaranteed access to education. If they were permitted to be in school, it was typically in segregated settings where they were diagnosed and placed without parental consent. My message is straightforward. Congress has made monumental contributions to individuals with disabilities by promulgating IDEA. At this point, IDEA needs very little revision in its mandates, but significant upgrading of personnel who are critical to its effective implementation. IDEA has succeeded in assuring access for students with disabilities. We now need skilled personnel to provide effective instruction to assure positive outcomes.

It is no exaggeration to state that there is a severe, chronic shortage of qualified personnel to serve students with disabilities. Ninety-eight percent of the school districts in the Nation report special education teacher shortages. Ten percent of all special edu-

cators lack appropriate certification, resulting in approximately 618,000 students not served by qualified personnel.

In addition, our capacity to prepare teachers has been undermined by a shortage of special education teacher educators. The United States will need, as Chairman Kennedy said, over 200,000 new special educators by 2005. Thirty percent of special education faculty searches, however, do not get filled each year, often resulting in lost positions. If every college and university faculty position in special education were filled, about 3,000 more special education teachers could be prepared each year, serving 48,000 more students.

Afterward, I would like to submit a Department of Education-funded report regarding faculty shortages. Research clearly links these data on unqualified and unprepared teachers with poor student outcomes. On the other hand, special educators who rated their pre-service training very good consider themselves more successful than others in providing services and found their workload more manageable.

More than a decade ago, the University of Connecticut changed to a 5-year teacher preparation program requiring bachelor's and master's degrees and new expectations, including a subject area major, high admission standards, and extensive field experiences. The outcomes are dramatic. We have maintained a 98 percent employment record compared to a national average of about 60 percent. More than 50 percent choose to take positions in challenging inner-city schools, and 90 percent are still in their classrooms 5 years after graduating compared to national figures of about 60 percent.

We have made a commitment to collaborate with local schools that have agreed to work with our students and faculty. The expectation is that these professional development schools will result in simultaneous renewal, an equal partnership in which public school teachers and teacher education students and college faculty are transformed and enhanced. We have data indicating that this collaborative relationship is a unique and mutually productive vehicle for staff development and effective preparation of teachers.

An effective teacher education program that prepares personnel who can fully implement IDEA should include the following: integrated preparation of general and special education personnel; ongoing field experiences combined with reflective seminars; intensive internships which enhance professionalism and develop leadership skills; collaborative relationships between institutions of higher education and local schools, fostering simultaneous renewal; and a focus on reflection, self-determination, and acceptance of diversity.

Such a program is costly in terms of personnel resources. Few colleges are able to implement this type of program without Federal support. In fact, our renewed program was created with the support of Part D training grants. Federal support for personnel preparation is critical.

My recommendations: focus reauthorization of IDEA on enhancing personnel preparation so that we have professionals who are trained to effectively implement IDEA and foster productive outcomes for students with disabilities; provide resources for States and institutions of higher education to raise standards and create

incentives for attracting individuals to personnel preparation programs; and, finally, index Part D funding to Part B so that it will be 10 percent of Part B. This funding would be provided to institutions of higher education to address faculty shortages and to foster development and implementation of effective teacher education programs.

Thank you.

The CHAIRMAN. We will come back to those questions in the questions.

[The prepared statement of Mr. Shaw follows:]

PREPARED STATEMENT OF STAN F. SHAW

Mr. Chairman and Members of the Committee: I want to thank Chairman Kennedy, ranking member Gregg and Senator Dodd from my home State of Connecticut for this opportunity to talk with you about reauthorizing the Individuals with Disabilities Education Act (IDEA). I would like to note that I am a member of the Higher Education Consortium for Special Education (HECSE) that is an organization of doctoral programs in special education from around the country. I would like to submit two HECSE policy papers for your information.

I have been privileged to serve students with disabilities for more than 35 years. That perspective allows me to still vividly recall the status of young people with disabilities before IDEA, previous to The Education of All Handicapped Children Act, even prior the discussion of Senate Bill One in the early 1970s. During those times, individuals with disabilities were not guaranteed access to an education. If they were permitted to be in school it was typically in segregated settings where they often received little more than custodial care after they were diagnosed, labeled and placed without parental consent or even parental knowledge. My message is straightforward: Congress has made monumental contributions to individuals with disabilities by promulgating and amending IDEA in the last quarter century. That progress is evident in the national conference I opened yesterday regarding college services for students with disabilities that the University of Connecticut is sponsoring in Burlington, VT. There are participants from over 250 colleges that serve the 9.2 percent of college students who are individuals with disabilities. That figure is up from 2.6 percent when IDEA began in 1978. I believe, at this point, IDEA needs very little revision in its mandates, but significant upgrading of the preparation of personnel who are critical to its effective implementation. It is evident that IDEA has succeeded in assuring access for students with disabilities. We now need skilled personnel to provide effective instruction to assure positive outcomes.

It is no exaggeration to state that there is a severe and chronic shortage of qualified personnel to serve students with disabilities in the schools: 98 percent of the Nation's school districts report special education teacher shortages (ERIC, 2001; Fidler, Foster, & Schwartz, 2000) and shortages are most sorely felt in poor rural and urban schools; a 1998 survey completed by the American Federation of Teachers (AFT) shows that special education is the Nation's highest shortage area in the 200 largest cities; the American Association for Employment in Education (AAEE) lists specialty areas in special education among six of the eight teaching fields with the greatest shortages (AAEE, 1999); and in data collected for the 23rd Annual Report to Congress (USDOE, 2001), 39,140 individuals filling special education positions (approximately 10 percent of all teachers) during the 1998-1999 school year lacked appropriate special education certification. There is a ratio of one special education teacher to 16 students. This indicates a shortage of 39,140 teachers resulting in approximately 618,412 students not served by qualified personnel. Projections for the future show the situation worsening.

In addition, our capacity to prepare teachers has been undermined by a shortage of college and university special education teacher educators: the Council for Exceptional Children (CEC) predicts that the U.S. will need over 200,000 new special educators by 2005 (Kozleski, Mainzer, Deshler, Coleman, & Rodriguez-Walling, 2000); 30 percent of special education faculty searches do not get filled each year, often resulting in lost positions; and if every college and university faculty position in special education were filled, about 3,000 more special education teachers could be trained annually to serve about 48,000 K-12 students a year (afterward, I would like to submit a Department of Education funded report on faculty shortages).

Smith, Tyler, Pion, Sindelar and Rosenberg (2001) note that research clearly links this data on unqualified and unprepared teachers with poor student outcomes. On

the other hand, special educators that rated their pre-service preparation as very good considered themselves more successful than others in providing services and found their workload more manageable. I'd like to take the next few minutes to discuss approaches to deal with these challenges based upon our success at the University of Connecticut.

More than a decade ago, faculty of the University of Connecticut's Neag School of Education realized that our preparation program for both general and special education teachers was no longer adequate to meet the needs of the increasingly diverse and challenging students in the schools. We embarked on an intensive reform effort to develop a program that would be driven by current research on effective teacher education. We have continually collected data on program effectiveness and used these findings to further enhance student outcomes. The program is based on key components including a 5-year program of study, integration of general and special education students and faculty, fieldwork combined with a clinical seminar every semester, a full year intensive post student teaching internship, collaboration with Professional Development Schools, and an urban focus. Let me discuss the following themes as they relate to exemplary teacher preparation in special education.

A QUALITY TEACHER PREPARATION PROGRAM WITH HIGH STANDARDS WILL FOSTER RECRUITMENT AND RETENTION

We were initially concerned that few students would apply to the University of Connecticut when we moved from a traditional 4-year teacher preparation program to a 5-year program requiring completion of both BA and MA degrees and the following new expectations: a subject area major in English, history, science or math; minimum criteria including a B- grade point average, SAT scores over 1,100 or passing a standard assessment of reading, writing and math skills to apply for admission to the teacher preparation program; participation in school-based field experiences every semester including placement in inner city schools; a year long 20-hour-per-week internship in schools as part of the MA program; and completion of a research project as part of the internship.

I am pleased to report that our concerns were unfounded. Indeed, both the quantity and quality of applicants spiraled upward. We now have two qualified applicants for every available seat in our teacher preparation program. Students we admitted to the special education program this year had a mean grade point average of 3.41 (A-/B+) in their required liberal arts courses, average SAT scores of 1,180 and extensive volunteer experience with individuals with disabilities. These students are as good or better than any other cohort of undergraduate students in any field of study at the University. Our biggest problem is that we have had to reject numbers of qualified students because of limited resources. The caliber of our students and productivity of our program is documented by the fact that virtually 100 percent complete the program and we have maintained a 98 percent employment record compared to a national average of about 60 percent. What is even more encouraging to us is that more than 50 percent choose to take positions in challenging inner city schools after their successful experience in those schools while at UConn. The benefits of our quality program are most evident from the data on retention indicating that 90 percent of our students are still teaching after 5 years, compared to national figures of about 60 percent. This commitment and professionalism is best described by one of our graduating seniors who said: "We're learning about how to really make a difference in the world, and that's what I think I came here for when I wanted to be a teacher . . . this is what I'm going to do with my life. I'm so proud of myself. I can't believe that I'm going to make this [kind of] difference."

COLLABORATION BETWEEN INSTITUTIONS OF HIGHER EDUCATION AND LOCAL SCHOOLS PROVIDES FOR SIMULTANEOUS RENEWAL

We've made a commitment to collaborate with selected Professional Development Schools (PDS), local schools that have agreed to work in partnership with our students and faculty. This results in a critical mass of juniors, seniors and graduate students working in schools as observers, tutors, student teachers and "change agents" (e.g., internships that involve developing an after school program, revising curricula, implementing new reading or math programs, supporting classroom teachers work with students with disabilities). The expectation is that this relationship results in what John Goodlad refers to as "Simultaneous Renewal", an equal partnership in which public school teachers and teacher education students and college faculty are transformed and enhanced. As indicated by the following comments from teachers in one of the poorest performing inner city schools in the country, UConn has demonstrated that simultaneous renewal has occurred.

I look at things that I see a student teacher doing and I wonder whether I'm doing the same thing and it kind of puts checks and balances on me, too. I say, I wonder if I did that? I have to watch myself. If I catch them doing something wrong or good, I double check on myself to see if I'm doing the same thing.

We've been focusing on what we've been getting out of the University. While we were talking I thought the student teachers get a lot from here. They all like it. I think a lot of them have never been in a city school and they're kind of surprised how much real education is going on and they're pleasantly surprised. Many of them choose to come back here for their fifth year and it ends up being a tremendous experience for them and makes us realize that there are actually a lot of positive things that we do and usually we don't get that reputation. The rest of the world hears about the negative, but when they're here they realize how much good is happening.

It is apparent to us that this collaborative relationship among teacher education faculty, teacher preparation students and school faculty is a unique and mutually productive vehicle for staff development and effective preparation of teachers.

EFFECTIVE PERSONNEL PREPARATION IS LABOR INTENSIVE CALLING FOR FEDERAL CAPACITY BUILDING

An effective teacher education program that prepares personnel who can fully implement the mandates of IDEA and provide productive outcomes for students with disabilities should include the following: integrated preparation of general education and special education personnel so they understand each other's needs and have worked together from the outset of their pre-service program; on-going field experiences (with an urban focus) combined with reflective seminars that provide an opportunity to integrate college classroom instruction with school realities; intensive internship which enhances professionalism and develops leadership skills; collaborative relationships between institutions of higher education and schools fostering simultaneous renewal; and a focus on reflection, inquiry, self-determination, and acceptance of diversity.

Such a program is likely to require 5 years rather than the traditional 4 and is costly in terms of personnel resources. It is likely that few schools will be able to implement such a program without Federal support. In fact, our renewed teacher preparation program at UConn was initially "field tested" with the support of Part D training grants. Therefore, Federal support for personnel preparation is critical.

RECOMMENDATIONS

1. Focus reauthorization of IDEA on enhancing personnel preparation so that we have professionals who are trained to effectively implement the mandates of IDEA and foster productive outcomes for students with disabilities.
2. Provide resources for States and institutions of higher education to raise standards and create incentives for attracting individuals to personnel preparation programs.
3. Index Part D funding to Part B so that it will be 10 percent of Part B. This funding should be provided to institutions of higher education to address faculty shortages and to foster development and implementation of effective teacher education programs that feature on-going field experiences with reflective seminars, integration of general and special education students, intensive internships and implementation of Professional Development Schools.

The CHAIRMAN. Ms. Mayerson, we welcome you here. We want to thank you on behalf of the committee for all of your help and work, particularly in the courts of law, in trying to reflect some of the expression and clear intent of what this committee was attempting to do with so many of these pieces of legislation with regards to the disabled and also the debates on the floor. You have really captured the sense in their representations in the courts, and I know the whole community is very grateful to you, and we are as well. We appreciate your being here.

**STATEMENT OF ARLENE MAYERSON, DIRECTING ATTORNEY,
DISABILITY RIGHTS EDUCATION DEFENSE FUND, INC.,
BERKELEY, CA**

Ms. MAYERSON. Thank you, Senator Kennedy, and thank you for your continuing role as a champion for children with disabilities and their families.

It is a privilege to be here today to share some of my insights from 22 years of representation of children with disabilities and their families and adults with disabilities. I would like to thank all the members of this committee for giving me the opportunity to share this experience with you.

The members of this panel have spoken about accountability as it relates to measuring outcomes, the preparation of teachers, and fiscal responsibility. All these things, of course, are critically important. To parents of disabled children, accountability represents a historic shift in the relationship between parents and schools and the crux of the IDEA.

Before the IDEA, parents had no way to hold their schools accountable for when, where, or if their child would receive an education. The IDEA was historic because it recognized the critical role of parents in assuring that children with disabilities receive an appropriate education. This is not only because parents know their children most intimately, but also because the parents have no competing fiscal and administrative demands.

Parent involvement serves to keep the focus where it belongs: on the child. Unfortunately, it is difficult for many parents who avail themselves and their children of IDEA protections because of the unequal position they too often find themselves in.

There are many reasons for this. The schools not only have control over the resources, but also have unequal access to the language and information systems needed to make decisions. Many parents are intimidated by professionals and are often greatly outnumbered at IEP meetings. All of these inequalities are even more acute when disputes arise.

It is very difficult for parents of children with disabilities and their advocates to hear continually about the burdens of school districts and how parents have school administrators in their grip. Nothing could be further from the experience of the thousands of parents of disabled children who struggle day-in and day-out to provide their children with the education they need and deserve.

The parent participation provisions of the IDEA were designed to level the playing field. We know from our experience that the concepts in the law are right. We need to think about ways to make them work for all parents. We need to assist and empower parents. Any reauthorization of the IDEA should focus on how to help parents exercise their rights, and any proposals which in any way dilute parent participation, due process, or enforcement must be resoundingly rejected.

To give some personal insight to this parent participation and the role of parents in assuring their children's rights, I would like to introduce the panel to Rachael Holland. We have a poster here for the audience and for all of you here on the panel. I would like to show you a picture of Rachael Holland.

Here we have what looks like and what is a very happy, a jubilant high school graduate, posing before graduation ceremony in her beautiful robe, excited about graduating.

Unfortunately, the road to this point for Rachael Holland has been fraught with barriers, anguish, stereotypes, and heartbreak.

Rachael Holland is developmentally disabled. When she was in kindergarten, she was placed in a special day class, away from her peers. When her parents asked if Rachael could just participate in recess with her peers, they were told, "No, she would be too disruptive. She would retard them."

Rachael Holland's parents had to take her right to be with her peers through every level of due process all the way to the U.S. Supreme Court.

After winning at every single level, the school district appealed and appealed and appealed and appealed. Finally, she had her right to go to school with everyone else. Finally, she reached this day where she was going to graduate regular high school with her peers. But, sure enough, she was told that special ed. kids graduate in a separate ceremony. Her parents brought in the law. That was fixed. Then just yesterday—tomorrow is graduation—her parents got a message on their machine saying "We want you to make sure, you must, must assure us that Rachael will act appropriately." Again, her parents had to run down to the school the day before graduation.

Parents need empowerment. I have three specific proposals in my written testimony for increasing parent participation, for effective monitoring that measures outcomes, and for the use of the Department of Justice as an enforcement like in all other civil rights laws. I would be very happy to entertain any questions of those specific proposals. This is a civil rights law, and we should never lose sight of the fact that we are assuring the rights of Rachael Hollands of our country to the civil rights that they deserve.

Thank you.

[The prepared statement of Ms. Mayerson follows:]

PREPARED STATEMENT OF ARLENE MAYERSON

ACCOUNTABILITY

The word conjures up auditors reviewing expenditures or tests measuring achievement. To parents of disabled children, "accountability" represents a historic shift in the relationships between parents and schools and the crux of the IDEA. Without recounting the history of outright exclusion and segregation of children with disabilities prior to the enactment of the Education for Handicapped Children's Act (EHA) in 1975, suffice it to say that neither the disabled child or his/her parents had any rights to hold the district or the State accountable. "Early legislation in many States permitted the exclusion of any child whenever school administrators decided that the child would not benefit from public education or that a child's presence would be disruptive to others. The egregiousness of some legislation was demonstrated in a North Carolina statute that made it a misdemeanor for a parent of a disabled child to insist that his/her child be educated in a regular public school."¹

In the seminal case leading up to the EHA (IDEA), *PARC v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa 1972), parents found out that their child was deemed "uneducable"² when the school bus failed to show up on the first day of school. Parent participation is a key value which needs to be reinforced and bolstered in any

¹ Philip T.K. Daniel, *Education for Students with Special Needs: The Judicially Defined Role of Parents in the Process*, 29 J.L. & Educ. 1, 6 (2000)(citations omitted).

² *PARC v. Pennsylvania*, 343 F. Supp. 279, 292 (E.D. Pa 1972).

IDEA Reauthorization proposals. In addition to participation in their own child's education, parents rely on mechanisms set up to ensure that districts comply with the law. State and Federal monitoring and enforcement is essential to assuring accountability with IDEA mandates. These areas must also be enhanced so that chronic non-compliance is curtailed.

Parent participation is critical to the development of an appropriate educational plan because the parent knows the child most intimately and because the parent has no competing fiscal or administrative demands. The parent therefore serves to keep the focus on the educational needs of the child. However, the ability to effectively utilize these procedures depends largely on the resources of the parent involved. As commentators often acknowledge, "many parents lack the ability to be effective advocates for their children. At the Individual Education Plan (IEP) level, these parents may be unable to understand their children's placements, let alone articulate different ones. They may not be aware of the extent of their children's rights to a free appropriate education (FAPE) or the procedural mechanisms to seek redress in case of disagreement. Second, the environment of the IEP process is heavily reliant on technical terminology to discuss the child's educational status and progress."³

Currently, parents must face the often daunting prospect of an IEP meeting alone. I can't tell you how many parents have told me about the lost sleep and sick feelings due to the fear and anticipation of going to an IEP meeting. In a survey of parents of children with disabilities, parents recounted an almost universal experience of intimidation and anxiety.⁴ Parents described the situation in these ways:

"You feel like you're going to the principal's office."⁵

"It reminded me of a courtroom . . . you walk in and everybody else is already seated and you feel so conspicuous and like you're on trial or something. I found it really intimidating."⁶

"I get nervous when I'm with them, because it's 12 against 1 . . . I've got to take a tranquilizer before I go. It's totally intimidating!"⁷

"You can cut the air with a knife when you open the door."⁸

As one commentator has noted:

There is an asymmetry to the IEP conference that arises not only because the parents and professionals speak different languages and view the world through different lenses, but also because their status at the conference table is fundamentally different. In the CSE (Committee on Special Education) meetings, one party enters the discussion with control over resources while the other has only needs and rights. The party with control over resources—the CSE—has no needs or emotions to "share" or to trade, just as the party with needs and emotions—the parent—has no resources to offer in the negotiations. The negotiating process for the parent is, therefore, a matter of attempting to bargain for resources by citing needs—a frustrating and sometimes humiliating process. As we have observed, the bargaining process is further skewed by an unequal access to the language and the information system in which needs must be articulated in order to justify the expenditure of resources.⁹

To be fair and to realize the goal of the IDEA, of leveling the playing field between parents and school districts, parents should have assistance available to prepare for and attend IEP meetings. The current funding for Parent Training Information Centers is woefully inadequate to fulfill this role.

If a parent and school district have a disagreement at the IEP meeting, the parents or school district can initiate a due process hearing. Again, the parents and school district are in unequal positions, and parents with the least resources are in the worst position to effectively utilize due process. While there is much talk about the costs and burdens of administrative due process hearings, the reality is that they are drastically underutilized by parents. The problem is not that school districts are burdened, but that parents are not using an essential tool given to them in 1975 to help ensure attainment of the substantive guarantees of the IDEA, FAPE

³Steven Marchese, *Putting Square Pegs Into Round Holes: Mediation and the Rights of Children with Disabilities Under the IDEA*, 53 Rutgers L. Rev. 333, 343, (2001)(citations omitted).

⁴David M. Engel, *Origin Myths: Narratives of Authority, Resistance, Disability and Law*, 27 Law & Soc'y. Rev. 785, 79–806.

⁵*Id.* at 801.

⁶*Id.* at 802.

⁷*Id.*

⁸*Id.*

⁹*Id.* at 819–20.

in the least restrictive alternative (LRE) are realized.¹⁰ The enactment of the Handicapped Children's Protection Act in 1985, helped ensure parental participation in due process hearings by allowing reimbursement of attorney fees to prevailing parents. However, it is still difficult to find lawyers willing to take cases on these terms.¹¹ Any proposal to dilute even further the parents' ability to utilize due process procedures should be resoundingly rejected.

Even when districts do not use lawyers at due process hearings, their use of professional staff with hearing experience creates an imbalance which few parents would attempt to confront unassisted. A colleague of mine who is a partner in a big San Francisco firm told me that he asked his litigation partner to represent him in an education hearing for his disabled daughter. My colleague considered it impossible to maintain the composure necessary to be an effective advocate when his child was the subject of the dispute. No parent should have to forgo a critical due process protection in the law because he/she cannot afford representation.

Some believe that the solution to this dilemma is the increased use of mediation, even mandatory mediation. While seemingly benign, these proposals threaten to entrench the power imbalance to the detriment of disabled children. As another commentator has stated, "[w]ithout attention to the context of special education disputes, particularly for less able parents, the mediation cure has the potential to be worse than the due process problem it was supposed to fix."¹² "Power imbalances between families and districts, information inequities between the parties, lack of guaranteed parental access to paid advocacy, and the absence of uniform mediator training and qualifications are all significant concerns."¹³ "The danger is that the rush to resolve conflict may yield results that are unfair to the very people the IDEA was designed to empower."¹⁴ "Further, because there is a dependent relationship between the child with a disability and the school district, the tendency will be for the weaker party (in this case, the child's family) to compromise or accept something less than desired in the face of intransigence by the stronger party (the school district), unless the weaker party has some means of strengthening its bargaining power."¹⁵

Given the power imbalances between the parties, there is high potential for a "compromise" that does not adhere to the statute's requirements for FAPE in LRE. Rather, in the guise of promoting a "non-adversarial" proceeding, mediation could make it easier for districts to win concessions that would be harder to achieve through a formal hearing.¹⁶

It is for these reasons that proposals to mandate mediation are not benign. In fact, it is the least equipped parent who would decide to turn down voluntary mediation. A parent who turns down voluntary mediation may very well be fearful of the power imbalance.

For mediation to fulfill the IDEA's goal of leveling the playing field, parents should have the right to assistance. The "failure to require States to pay for outside assistance at mediation increases the likelihood that less advantaged parents will make agreements without a full understanding of the legal consequences."¹⁷ At a minimum, mediation must be voluntary and must assure that the unequal position of the parent does not compromise the child's right to FAPE in LRE.

While it is imperative to give parents the tools necessary to hold their school districts accountable, the IDEA never contemplated that they would do it alone. In fact, the more the Federal and State Departments of Education fail in their monitoring duties, the more the burden falls on parents and private litigation.

I know the Committee has heard about the findings in the National Council on Disabilities (NCD) Report *Back to School on Civil Rights*. To quickly summarize:

Every State and the District of Columbia out of compliance with IDEA requirements: 90 percent of States failed to ensure compliance in the category of general supervision; 88 percent of States failed to ensure compliance with the law's secondary transition services provisions; 80 percent of States failed to ensure compliance

¹⁰ Despite the hyperbole about the burden of due process hearings, the actual utilization is shockingly low. Thirty-one States had less than fifteen hearings in 2000, twelve States less than fifty. *Due Process Hearings: 2001 Update Project Forum at NASDSE*.

¹¹ Jonathan A. Beyer, *A Modest Proposal: Mediating IDEA Disputes Without Splitting the Baby*, 28 J.L. & Educ. 37, 43 (1999).

¹² Marchese, *supra* note 3, at 338.

¹³ *Id.* at 350.

¹⁴ *Id.* at 350–51.

¹⁵ *Id.* at 355.

¹⁶ Andrea Shemberg, *Mediation as an Alternative Method of Dispute Resolution for the Individuals with Disabilities Education Act: A Just Proposal?*, 12 Ohio St. J. on Disp. Resol. 739, 779 (1997).

¹⁷ Marchese, *supra* note 3, at 360.

with the law's FAPE requirements; 78 percent of States failed to ensure compliance with the procedural safeguards provisions of the law; and 72 percent of States failed to ensure compliance with the placement in the LRE.

Even these dramatic figures don't tell the whole story. Both the Federal and State monitoring records demonstrate that sanctions are not employed even after repeated failures to correct violations. For example: The U.S. Department of Education, Office of Special Education Programs (OSEP) has repeatedly found California out of compliance with its general supervisory responsibilities under IDEA in failing to maintain an effective monitoring and enforcement system. In the 1992, 1996, and 1998 OSEP reviews of California, CDE's deficient monitoring system is cited as a major area of noncompliance resulting in the lack of services to children with disabilities. OSEP has issued various corrective action plans ordering California to correct this deficiency.

The failure of the OSEP to compel compliance by the California Department of Education (CDE) and the failure of the CDE to properly investigate and compel compliance by local school districts creates a "paper lion" mentality—since there is no real consequence to failure to comply with mandated corrective action, the same violations are repeated over and over again. This is not only a waste of time, money and resources but, most importantly, has dire consequences for the children the law was designed to protect.

In a lawsuit in which my organization is involved, the East Palo Alto school district (Ravenswood City Elementary School District) had been found out of compliance by the CDE numerous times. Children in the district were not adequately or timely identified or assessed, failed to receive adequate IEP's, IEP's were not implemented, and children were unnecessarily segregated from non-disabled students. In October 1997, the Court found the CDE "not up to the task of ensuring Ravenswood's compliance with Federal law."¹⁸ The court held that requiring the plaintiffs to exhaust administrative remedies "would only punish Ravenswood's disabled students for the CDE's past failures."¹⁹

As stated by the judge, "the injuries inflicted on the students by the District's failure to provide adequate special education services are often irreparable."²⁰ Moreover, Judge Henderson underscored "that many of the children served by Ravenswood are low-income, and come from racial minority groups with limited English proficiency who already face higher dropout rates and lower employment rates. For those students who face the additional challenge of a disability, the risk of injury from lack of special education services is even more grave."²¹

For OSEP to be taken seriously in assuring accountability, it must revise its monitoring procedures and sanctions and enforcement must be vigorously pursued if compliance is not reached within a reasonable time frame. As you are aware from previous witnesses, a group of advocates, parents, educators, special education directors and OSEP staff have been meeting to develop more efficient and effective monitoring procedures, known as focused monitoring. Focused monitoring envisions a broad group of people identifying significant priorities which would be monitored using a data-based and verifiable system, with provisions of supports and capacity-building and, when necessary, utilization of sanctions in accord with a protocol for making decisions about the level of OSEP intervention.

Benchmarks for compliance are established and triggers for rewards or sanctions are established. For example, in the most recent draft the benchmark for compliance with the least restrictive alternative (LRE) requirements is 90 percent of students with disabilities are educated in general education classes for 80 percent or more of the school day. The following triggers would be established:

Trigger for Category 1:

90 percent of students or more are educated in general education for more than 80 percent of the school day.

Trigger for Category 2:

States that do not meet the triggers for categories 1, 3, or 4.

Trigger for Category 3:

Appearance on one of the following lists:

(a) Rank in the top 30 percent of States when measuring the percentage of students spending more than 60 percent of the school day outside of the regular classroom.

(b) Rank in the top 30 percent of States when measuring the percentage of students educated in public or private special education facilities.

¹⁸ *Emma C. v. Eastin*, No. C96-4179 TEH at 10 (N.D. Cal. Oct. 1, 1997)(order).

¹⁹ *Id.*

²⁰ *Emma C. v. Eastin*, No. C96-4179 TEH at 32 (N.D. Cal. Oct. 4, 2001)(order re: contempt).

²¹ *Id.*

Trigger for Category 4:

Appearance on any two of the following lists:

(a) Rank in the bottom 20 percent of States when measuring the percentage of students spending less than 21 percent of the school day outside of the regular classroom.

(b) Rank in the top 20 percent of States when measuring the percentage of students spending more than 60 percent of the school day outside of the regular classroom.

(c) Rank in the top 20 percent of States when measuring the percentage of students educated in public or private separate school facilities.

Example

Using these triggers, no States would be in Category 1.

Using these triggers, thirty-six States would be in Category 2: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

Using these triggers, seven States would be in Category 3: California, Michigan, New Jersey, Pennsylvania, Puerto Rico, Rhode Island, Utah.

Using these triggers, nine States would be in Category 4: Delaware, District of Columbia, Georgia, Illinois, Louisiana, Maryland, New York, South Carolina, Virginia.

Protocols would be established to determine how OSEP will intervene or what other action will be taken when a State has not completed required corrective actions and when performance goals are not met by the identified deadline.

While these procedures should make it clearer, and therefore easier, for OSEP to impose sanctions, other avenues must also be available for parents who have complaints of persistent systemic violations. As in so many other areas of disability law, we can learn from the experience of other civil rights laws. It is essential to always remember that these are civil rights for children with disabilities, and this must never be lost in a bureaucratic maze.

In this regard, we propose the adoption of a provision modeled on the 1964 Civil Rights Act, which allowed parents to complain directly to the Attorney General in desegregation cases. This remedy exists side by side with the Department of Education's Title VI jurisdiction over desegregation cases.

Likewise, parents of disabled children should have the ability to file systemic complaints directly with the Attorney General, who is empowered to bring a lawsuit to remedy the violation. Pattern and practice violations, such a failure to provide appropriate and timely assessments and failure to educate children in the least restrictive environment, could be addressed by the Department of Justice. This would provide, like in the 1964 Civil Rights Act, an avenue in addition to fund terminations to seek compliance.

Modeled on 42 U.S.C. § 2000 C-6, the provision would read as follows:

Proposed IDEA Amendment

Whenever the Attorney General receives a complaint in writing signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived of rights guaranteed under the IDEA, the Attorney General is authorized, after giving notice of such complaint to the appropriate local education agency or State Department of Education and after certifying that he is satisfied that such agency or department has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as many be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

CONCLUSION

It is difficult for parents of disabled children and their advocates to hear about the burdens to school districts and how parents have school personnel in their grip. Nothing could be further from the reality of the thousands of parents who struggle day in and day out to provide their children the education they need and deserve.

The due process and monitoring and enforcement mechanisms in the law were designed to recognize the importance of full parent participation, to level the playing

field and promote accountability. To fully realize these goals, parents need training, assistance and representation, and Federal and State agencies need to demonstrate a commitment to the children first, through vigorous enforcement.

Thank you for allowing me to appear before you. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much.

Mr. Gloeckler, we are delighted to have you. We note that Senator Clinton is here as well, and we particularly appreciate your willingness to come down and bring a very special insight into this whole issue. We are glad to hear from you.

STATEMENT OF LAWRENCE C. GLOECKLER, DEPUTY COMMISSIONER, VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES (VESID), NEW YORK STATE EDUCATION DEPARTMENT, ALBANY, NY

Mr. GLOECKLER. Thank you for the opportunity, Senator Kennedy, Senator Clinton, and other members of the committee. I consider it an honor to be here, and I do want you to know that the Kennedy name has played a role in my career. I was the first class of future teachers to receive a Kennedy scholarship to be able to become a teacher of the mentally retarded. I am not going to say how long ago that was, but I appreciate that still today.

The CHAIRMAN. Good. Thank you.

Mr. GLOECKLER. I also was the first State Director of Special Olympics in New York State when it was an unpaid position. But I still enjoyed it. [Laughter.]

The CHAIRMAN. My sister Eunice—

Mr. GLOECKLER. Yes, I know. I drove her around Rochester.

The CHAIRMAN. A lot of big spenders up here. [Laughter.]

Mr. GLOECKLER. You have asked me to focus my few minutes of remarks on issues related to transition, and that is what I will do. My written testimony outlines what we in New York think are the issues more broadly stated, and we provide you data in that testimony which I believe paints a very clear picture, at least in New York, of where we have made substantial progress in educating students with disabilities, but also where we have areas where we have to improve.

I hope you will look carefully at those facts, but let me move on to transition, and I premise these remarks with two thoughts. First of all, we have almost always underestimated the ability of students who happen to have disabilities, and, therefore, our expectations have almost always been too low. The measure of special education is not how many services we provide. It is not whether a student completed school. But, instead, did the student leave school fully prepared to pursue postsecondary education, engage in meaningful employment, and participate as fully as possible in a community life where they live? If not, then we have failed.

The transition requirements are a key to that, but they have been very difficult to implement systemically. We have pockets of excellence in our State, but we also have gaps. So why do we still have them?

I believe the primary burden of transition has been placed squarely on the shoulders of a system that has been more often than not left to do it alone. Quite frankly, the education system is not able to accomplish the intended results by itself. Yet we have

not constructed an effective strategy for ensuring that other systems participate in a meaningful way. The strategy of interagency agreements, which is our primary strategy in law, only works well when the agreements are backed by real capacity to implement.

I have laid out a set of recommendations that come from research we have done in New York based on extensive experience on attempting to implement transition and follow-along studies that we have done with students who have left school, and they appear in the last three pages of the testimony. But I would just like to highlight a few now.

First of all, I hope in this next reauthorization you will recognize the need to dedicate resources to transition across systems. We recommend that a pool of targeted money be allocated from multiple sources, thus creating multiple commitment and multiple accountability for ensuring that there are successful results in transition.

The pool of money should be created from funds from IDEA, but also the Rehabilitation Act, the Higher Education Act, Ticket to Work, TANF, VATEA, and perhaps others. It should be free of the otherwise restrictive bureaucratic rules each source currently has, with two caveats: one, it be spent for students with disabilities; and, two, it be spent for services specified on the agreed-upon transition plan.

There must be incentives to bring both community-based and State rehabilitation agency resources and independent living expertise into schools to participate in transition planning. IDEA currently forces a reliance on what often are the wrong people, whom ever the school has available in the transition process.

We also have substantial evidence that community-based work experience at the secondary and postsecondary level leads to greater employment success. We also know that students with severe disabilities are often limited from participation in after-school and summer employment experiences. Knowing that, let's target resources directly to establish these programs.

I want to mention particularly Ticket to Work. I think that is a sleeping giant in the possibilities for transition. If we were able to design creative ways to use it to support the opportunities for employment preparation while students are still in school, I think it could become an important revenue incentive for schools to build capacity.

Finally, there is abundant evidence that shows that when community-based services such as mental health and health services are readily available to schools, indicators of students' quality of education improve dramatically. IDEA's structure supports collaboration through agreements, but does little to address the funding and program conflicts that are currently the real barriers to effective collaboration.

Last, to use a sports analogy for a Senator whose team won the Super Bowl, today transition is often like a long pass in football. The receiver is way down field, and the passer throws the ball as far as he can, hoping it will be caught. It should be like a relay race where, when the baton is passed, both runners are holding it until the receiver has securely put it in his grasp. I hope that we can deal with that in this next reauthorization.

Thank you very much.

[The prepared statement of Mr. Gloeckler follows:]

STATEMENT OF LAWRENCE C. GLOECKLER

In 1995, the New York State Board of Regents and State Education Department embarked on a reform agenda to improve educational achievement for all students. High standards were established, progress on the standards was to be measured and reported, and school districts were required to provide academic intervention services where adequate progress was not demonstrated to assist all students in achieving these standards.

New York State's Office of Vocational and Educational Services for Individuals with Disabilities (VESID) vision is that students with disabilities will leave school prepared to live independently; enjoy self-determination; make choices; contribute to society; pursue meaningful careers; and enjoy integration in the economic, political, social, cultural and educational mainstream of American society. To accomplish this, the State Education Department adopted the following goals for reform of the special education system:

- Eliminate unnecessary referrals to special education.
- Assure that students unnecessarily placed, or who no longer need special education services, are returned to a supportive general education environment.
- Hold special education services to high standards of accountability to improve results for students with disabilities.
- Assure that students with disabilities are educated in settings with their non-disabled peers to the maximum extent appropriate to their individual needs.
- Provide mechanisms for school districts to develop or expand support and prevention services.
- Assure that school personnel and families have the knowledge and skills that enable them to effectively assist students with disabilities in attaining high standards.

One of the most important aspects of the 1997 reauthorization of IDEA is the focus on accountability and student performance. The primary concern of families and schools should be the achievement of successful outcomes by students. Thanks to IDEA 1997, parents of students with disabilities now have the right to be informed about their child's performance with the same frequency and across the same measures as their non-disabled peers. The addition of the alternate assessment has allowed parents of children with the most severe disabilities that same important information and has served as a breakthrough for creative thinking as to how children with the most severe disabilities can be educated based on standards that are important for all children.

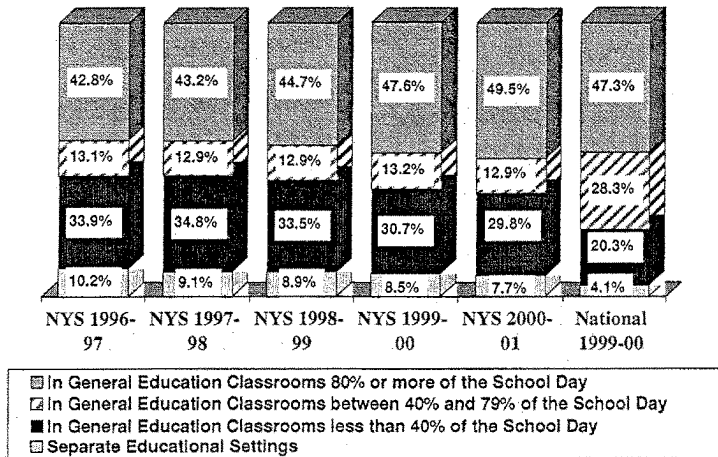
Schools must now examine and treat with equal seriousness the progress of all students. In New York State, we have moved to a performance-based approach, which was supported by the 1997 IDEA amendments. We now measure and report the performance of all of our students on all of our measures of accountability—from school report cards to measures of adequate early progress.

The value of this approach to accountability and performance is not to improve test scores per se, but rather to ensure that students with disabilities have the same opportunities to be prepared to live as independent adults. The vast majority of students with disabilities need to learn the same information contained in the general education curriculum as any other student. We need to prepare students with disabilities for opportunities to participate fully in society and pursue meaningful careers, postsecondary education and as high a quality of life as possible.

This reauthorization of IDEA should make every effort to increase the focus of the law on supporting student performance while reducing the reliance on procedure and process as the main focus of accountability. The reauthorization of IDEA should be based on what we know about the state of special education today and how we can use what we know to determine what improvements can be made in the law. The law should not be amended based on speculation, anecdote or emotion. Rather, amendments should be based on factual data which, at least in New York State, paint a very clear picture about where we are making progress and where our attention needs to be focused.

What do we know? We know that far more students with disabilities are being educated with their non-disabled peers and that these students show much better results on State assessments than those students who are placed in special classes all day. In New York State, this change was brought about by moving away from a focus on process requirements and instead focusing relentlessly on performance.

New York State has surpassed the national average; almost one of every two school-age students with disabilities attended regular education programs for 80% or more of the school day.

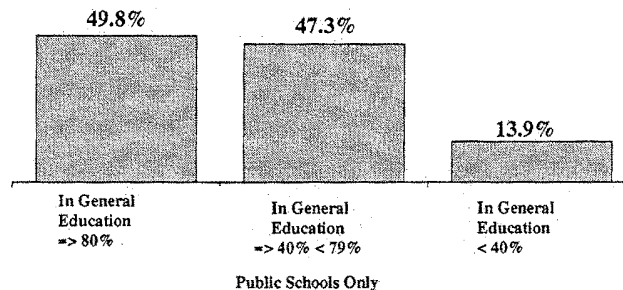


Data are as of March 14, 2002

Recent data indicate that the performance of students who participate in the general education environment for at least 40 percent of the day perform at a much high level than those who are removed for over 60 percent of the day to receive their special education services. On the charts that follow, scoring at Level 3 or above reflects the attainment of all the appropriate learning standards for that grade level, Level 2 represents partial attainment, and performance at Level 1 indicates that none of the grade level standards have been mastered.

Elementary Mathematics, 2001

A greater percentage of students with disabilities who attended General Education classrooms 40% or more of the school day scored at Level 3 or above.

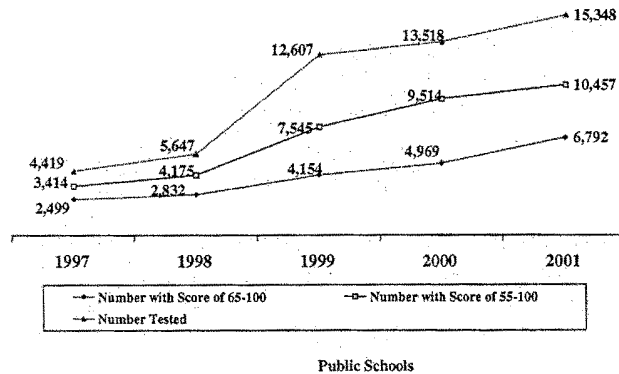


We know that the expectation of adults for students with disabilities has generally been far too low. As a result, students have often been denied an opportunity

to participate in rigorous curriculum and assessments. We know that students with disabilities, when given the appropriate supports and opportunity to access the general education curriculum, can achieve at much higher levels than adults would predict. Students with disabilities are performing at dramatically higher levels on our State Regents examinations, which are high school exit examinations.

Regents English Language Arts Examination -

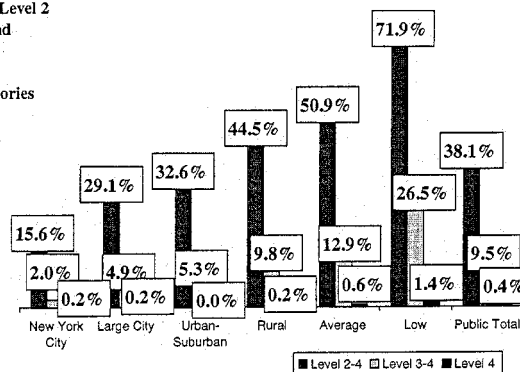
Since 1997, there has been a 247% increase in the number of students with disabilities tested. Of the students tested, 68.1% scored 55-100.



More than 11,500 students with more severe disabilities participated in our State alternate assessment, and, for the first time, their progress is being measured against State standards. In elementary grades, achievement results on State assessments are improving.

Middle-Level Mathematics, 2001 -

Percentages at Level 2 and above, 3 and above, and 4, Need/Resource Capacity Categories Students with Disabilities, 8th Graders Only



In the end, the best indicator that a child will receive a quality education is having a well-trained teacher. We have a shortage of qualified special education personnel and we are having difficulty retaining the personnel we have. Studies by our teachers unions have indicated that special education teachers are increasingly frus-

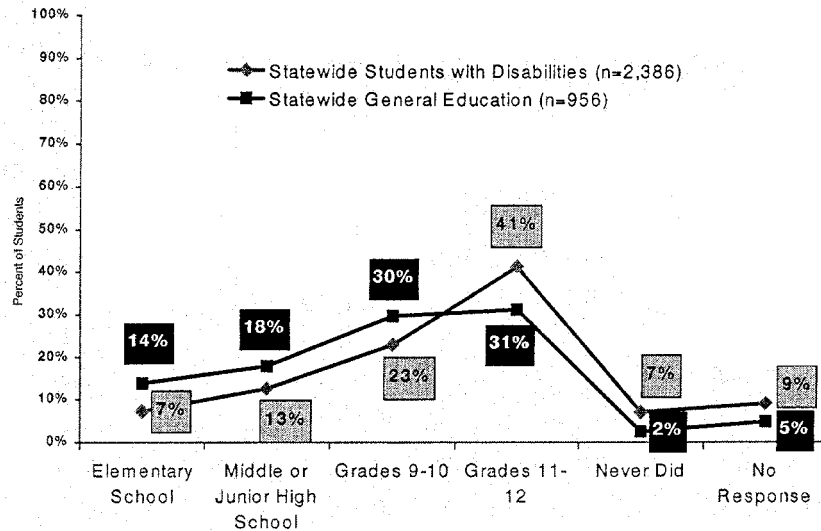
trated with the amount of time they must spend on process requirements. They also feel intimidated by the adversarial environment they feel they are placed in by the evolving quasi-judicial nature of due process provisions. We must seize the opportunity of this reauthorization to address this issue.

TRANSITION

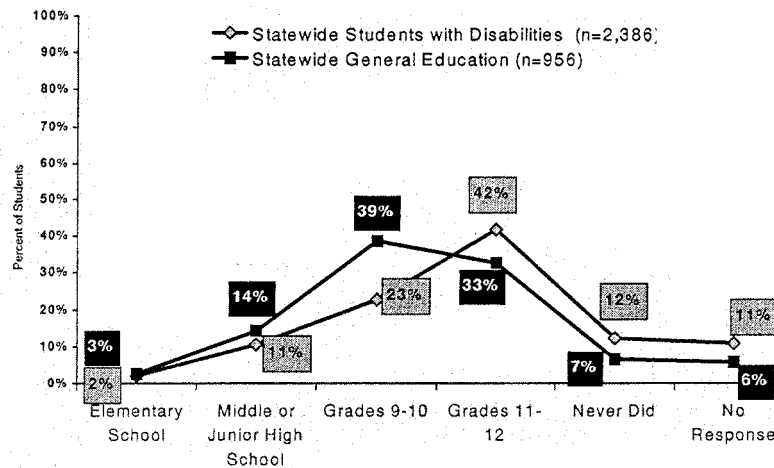
We have learned that quality transition planning and implementation make a significant difference in the likelihood of success as an adult. We know this from our performance data as well as from what students have told us in our post school indicators study.

In New York, we have been studying the connection between good transition planning and supports and student success. We have collected important information from students about how they perceive their school experience. For instance, we know that students with disabilities receive information in school about careers much later than their non-disabled peers. They discuss their future plans with their parents much later in their school years, receive career information at schools much later and decide about continuing their education much later in their school years than their non-disabled peers.

When did Seniors from 2001 begin talking with parents about what to do after leaving school?

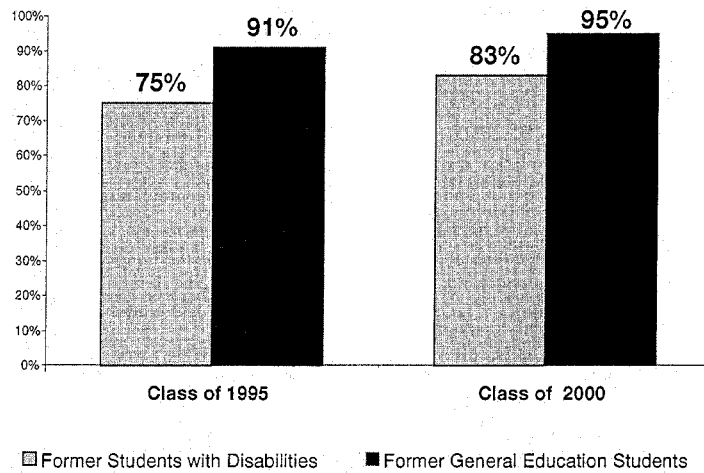


When did students first receive information at school about postsecondary education?



Students who receive standards-based diplomas have much more successful transitions into adult life. Eighty-three percent of students with disabilities in New York State receiving Regents local or IEP diplomas in the year 2000 made a successful transition into postsecondary education or employment, as compared to 75 percent in 1995.

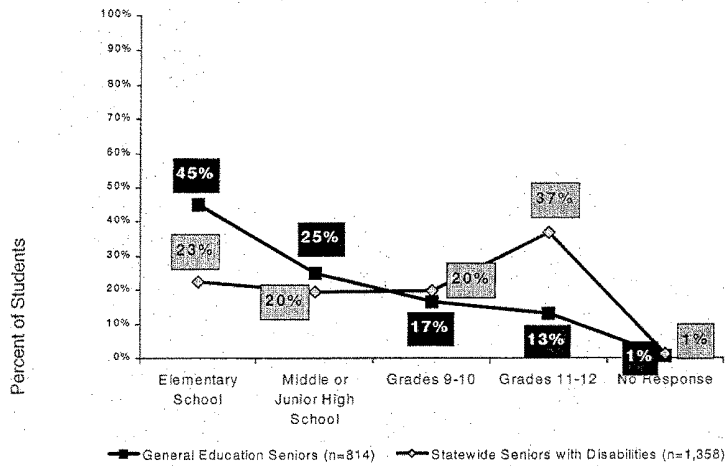
5 Year Trend in Post-School Status Reported by Former Students One Year Beyond High School



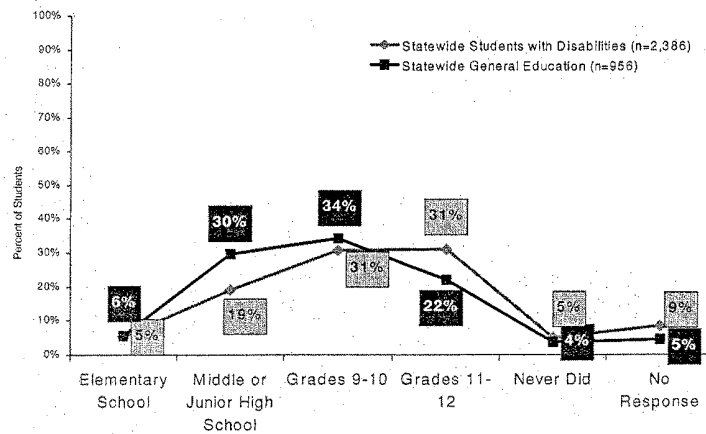
Source: NYSED VESID, Longitudinal PSI Data,
Preliminary Interview Results, 5/02

By focusing on transition planning, there is an increased awareness by schools of the post-school plans of students. In New York, from 1998 to 2001, the number of unknown plans dropped from 27 percent to 14 percent. The postsecondary education plans of seniors with disabilities rose from 38 percent to 44 percent and post-school employment plans rose from 22 percent to 26 percent.

**2001 Seniors Planning Postsecondary Education -
When did you decide to continue your education after high school?**

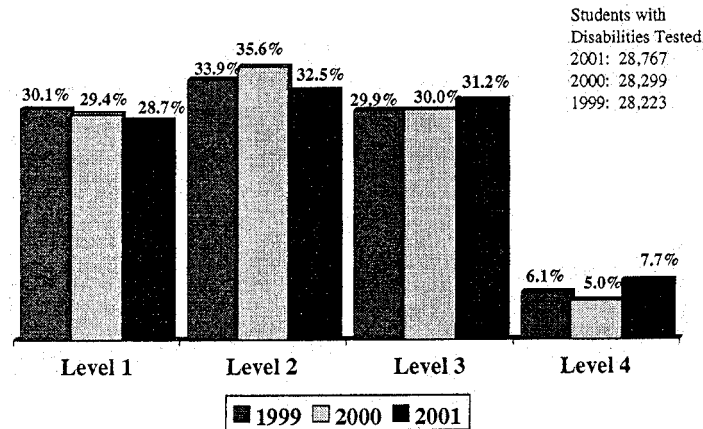


When did students first receive information at school about careers?



Elementary Mathematics -

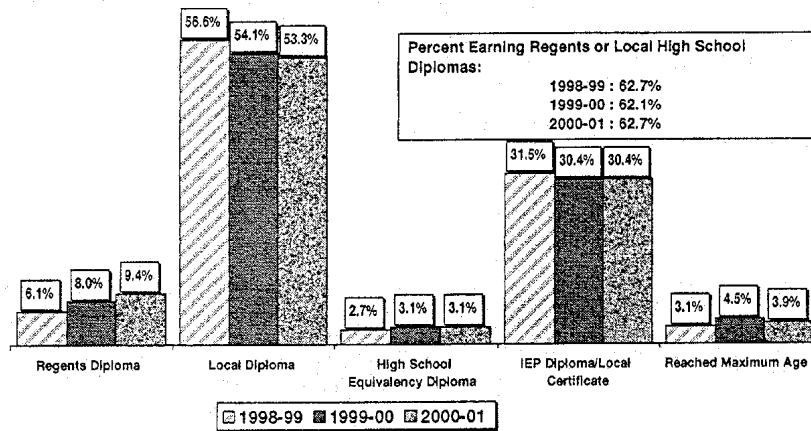
Compared to 1999, greater percentages of students with disabilities achieved a score at Level 3 and above.



Public Schools Only

More than 62 percent of our students with disabilities are graduating with high school diplomas that require passing of exit examination.

62.7% of students with disabilities who completed high school earned a Regents or local high school diploma*



*Note: These percentages include only students with disabilities who completed high school. Students who dropped out are not included.

Data are as of March 14, 2002

For the class of 2000, 32 percent of graduates with disabilities went on to college, compared to 17 percent in the class of 1995.

Enrollment of Students with Disabilities in NYS Institutions of Higher Education



NYS Education Department Data, 4/30/02

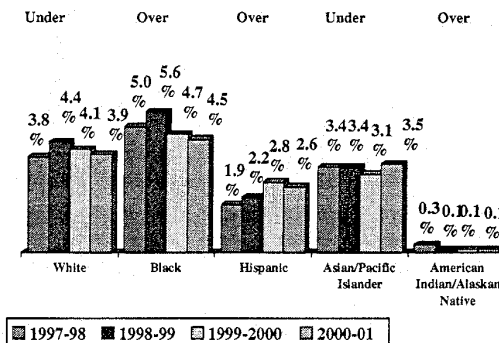
Student participation in paid or unpaid work experiences during high school increased from 37 percent in 1995 to 80 percent in 2001.

In New York State, special education and vocational rehabilitation are administered within the same office of the State Education Department. By continuing to create better communication between the two programs, we have increased the proportion of youth served in our caseload by 33 percent in the last 5 years.

There are also areas where data indicate we need to focus our attention. We know there continues to be a disproportionate placement of minorities in special education, although with the recent performance-based focus on this issue in New York State, we are starting to reverse these trends.

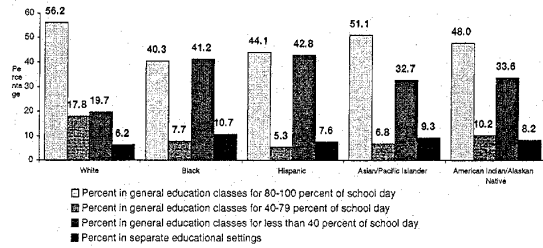
Percentage Point Gap Between Total Enrollment and Special Education Enrollment by Race/Ethnicity

Over-representation or Under-representation in Special Education



When placed in special education, minorities are placed in special classes and programs at much higher rates than are other children.

Greater percentages of minority students with disabilities were provided special education services in separate educational settings or in programs in which they attended regular education classrooms for less than 40% of the school day, in 2000-2001.

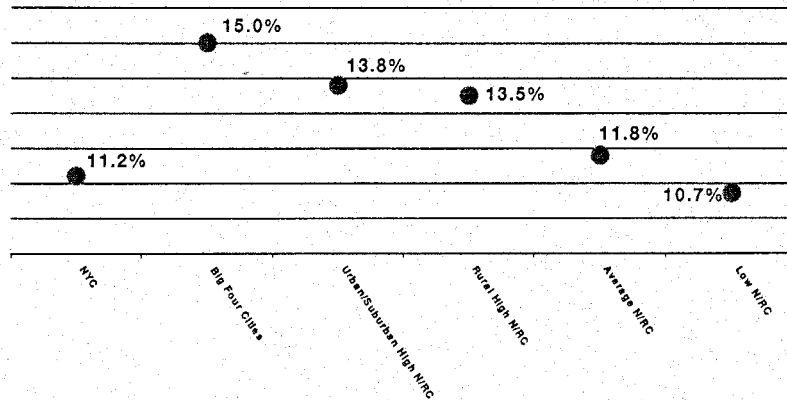


Data are as of March 14, 2002

Children in our poorer districts are more likely to be placed in special education and perform at significantly lower levels of achievement.

Generally, high-need districts classify a greater percentage of students for special education.

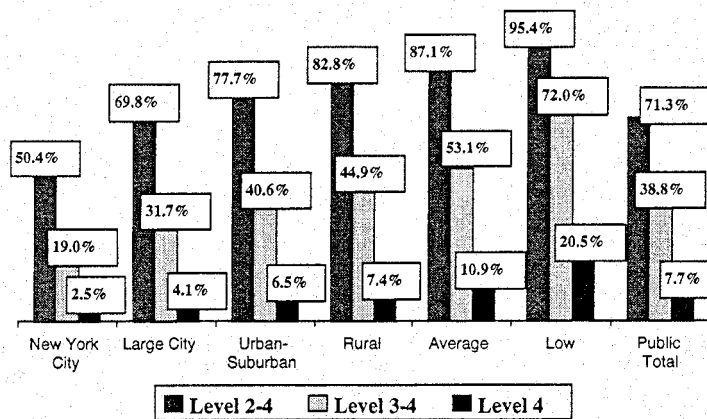
Classification Rates by Need/Resource
Capacity Categories of School Districts, 2000-01



Data are as of March 14, 2002

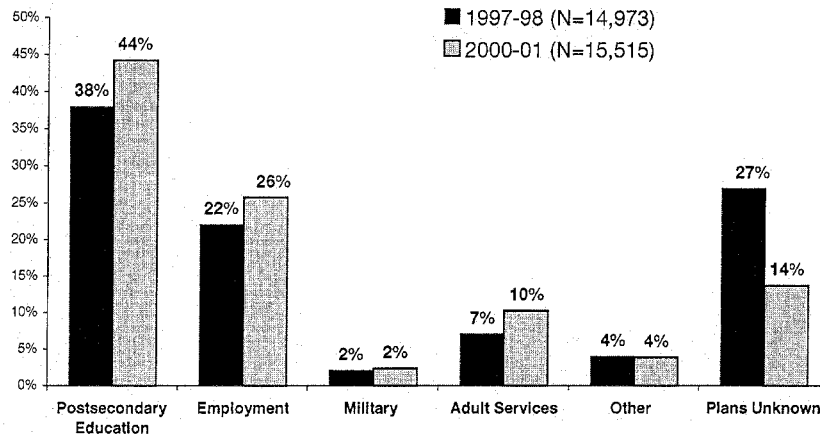
Elementary Mathematics, 2001 -

Almost all students with disabilities in Low Need districts scored at Level 2 or above, while only half of the students with disabilities did so in New York City.



We know that middle school results for children with disabilities, no matter what type of district, are alarmingly low.

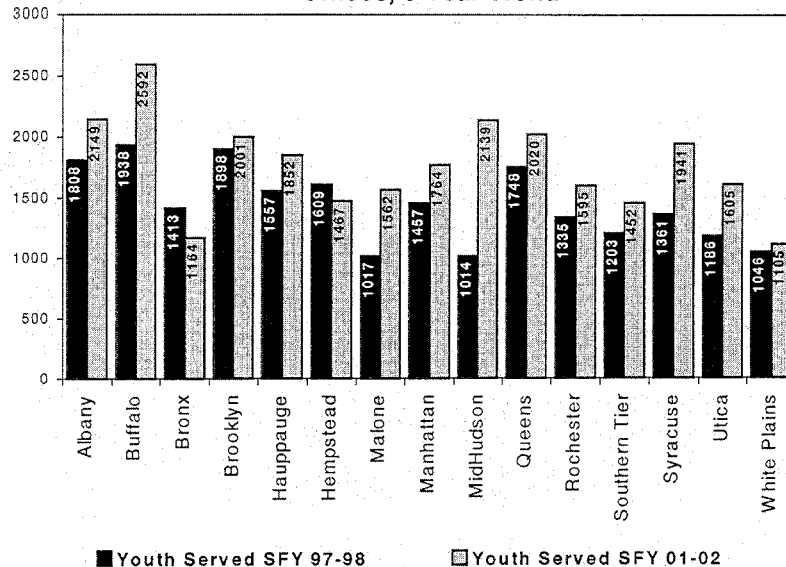
Post-School Plans of NYS Special Education Completers as Reported by Their Schools



NYS ED VESID Data, 2000-2001

From 1997 to 2000, enrollment of students with disabilities in institutions of higher education increased by 6,700.

Increases in Youth Served in Vocational Rehabilitation District Offices, 5 Year Trend



Increasing numbers of youth are being placed in jobs through the vocational rehabilitation system. In the 2001–2002 State fiscal year, 3,063 youth with disabilities were successfully employed. We also know that in-school work experience pays off. Students placed by our vocational rehabilitation program who had been involved in work experiences in school average as much as \$1 an hour more in their initial competitive employment than youth who did not. In the first year, they generated more than \$36,840,000 in annual income in return for the \$11,555,000 their services cost the system.

GENERAL RECOMENDATIONS

Based on what the data tell us about the implementation of IDEA, and what we have learned about how to improve performance in key areas of a student's educational program, we make the following recommendations:

All students must be included in all systems of accountability for student results. Accountability must focus on key performance indicators.

Data must be collected on key performance indicators and disseminated widely in plain language to stakeholders and the public at-large.

Resources must be targeted to areas of need based on key indicators.

The alternate assessment systems established by States as the result of IDEA 1997 must be allowed to evolve and change for the next several years. However, the participation of students with severe disabilities in an alternate assessment system is a positive development that must continue.

Monitoring and oversight for program delivery at both the Federal and State levels must be allowed to focus on the mechanisms for improving outcomes for students, rather than devoting such extensive time and resources to the less significant, but numerous, process requirements.

Prevention and intervention services must be established and aligned so everyone in need has access to them. The reauthorization of IDEA must be aligned carefully with the No Child Left Behind Act.

This reauthorization must focus on the looming problem of special education staff shortages. The age of the teaching force, in conjunction with the burdensome requirements of being a special educator, has led to predictions of tremendous staff shortages in the near future. To address the increasing rates of staff turnover and the continued movement of our most talented and expert individuals out of the special education delivery system, the IDEA must:

- Support creative incentives to help attract and train the next generation of personnel and allow institutions of higher education to expand and strengthen pre-service programs in both general and special education;
 - Provide States and LEAs with non-competitive funding to provide in-service training and technical assistance for school personnel and families; and
 - Reduce paperwork and other burdens on teachers.
- Teacher preparation program content must be infused with greater emphasis on academic achievement and performance-based accountability approaches.
- States must be able to require local districts to target IDEA funds to specific compliance issues when evidence is available that problems have gone unresolved.

RECOMMENDATIONS REGARDING TRANSITION

In addition to the above general recommendations, we make the following recommendations specific to transition and interagency efforts:

The role of independent living centers and community rehabilitation providers in the transition process should be recognized and augmented. Funds should be directly designated to facilitate participation of State vocational rehabilitation agencies in transition planning and to enable community programs and independent living services to be brought into the schools. Too much burden is placed on school personnel, who may not be the most qualified to provide transition services.

Create a pool of targeted monies from IDEA, VR, the Higher Education Act, TANF, Ticket to Work, VATEA, NCLB, WIA, and Medicaid. These monies would be allocated to support the services necessary for students to make a successful transition from school to work, post-secondary education and independent living. The funds would be flexible and not tied to current bureaucratic rules for each program but would have to support the services on the transition plan.

We recommend funding of community-based work experience programs at the secondary and postsecondary education levels to enhance the currently limited capacities of these programs to provide such experiences. At the secondary level, students with severe disabilities are limited from participation in after school and summer employment experiences. Additionally, when youth with severe disabilities attend postsecondary education, there is a need for resources for career internships or sum-

mer employment that could help these students learn to apply their classroom knowledge and build their resumes for job-seeking once they complete college.

Provide incentives to education entities to participate as employment networks under Ticket to Work.

Allow school work experience and career training programs to be Ticket reimbursable programs as part of a broader transition system.

Case management should be considered a core service provided to all transition-aged youth who either are or are becoming entitled to disability benefits. The early introduction and ongoing discussion of benefits planning and employment strategies within the school setting would serve to alleviate many of the issues families and youth face when preparing for the transition to adult life.

Simplify documentation and eligibility requirements between those systems that should be involved with transition to remove one of the main barriers to timely and smooth transitions from one system to another. In particular, students eligible under IDEA should be automatically eligible under vocational rehabilitation.

Establish capacity building grants to allow SEAs to develop follow-along data systems for youth transitioning from school so we can track youth to determine the level of success in transition and allow States to identify strategies that work and areas where the systems are not succeeding.

For students with severe disabilities:

- The developmental process is more complex. There is a need to individually design accommodative services, assistive technologies and 1:1 supports and make them available not only in school programs, but also in community, postsecondary education and workplace settings, with provisions to readily replace technologies as they evolve.

- Career development cannot take place in the absence of the development of independent living skills and supports. Services should be targeted to the student as well as the families/caregivers involved in the student's life. It is vital to keep the processes, procedures, and requirements for benefits and services simple so that consumers can concentrate more readily on employment options and opportunities.

The reauthorization should support innovative service delivery models between school and agency programs. Consideration needs to be given to how IDEA funds, as well as funds for other programs that have obligations to young people with disabilities, can be constructed around the needs of children. Research shows that when community-based services, such as mental health and health services, are readily available to schools, indicators of students' quality of education improve. The current IDEA supports collaboration, but does little to address funding and program responsibility disparities that are true barriers to interagency collaboration.

The CHAIRMAN. Thank you all for very helpful testimony.

We have 40 minutes before the vote, and so we will just divide that up between us, and I would ask the staff if they would do so.

First of all, I would like to ask Mr. Shaw, on these training programs, you talked at the end about moving money from training, D to B, and we are interested in this. But what are the qualities, what are the things that you find you have had great success in terms of recruitment, in terms of retention, in terms of the training, great need on that? What is it specifically, or will you give us as specifically as you can, what are the things that ought to be altered or changed besides sort of resources—we want to know that, too—that you think could be helpful to us?

Mr. SHAW. Certainly. We changed our program. We keep hearing about higher standards. We raised the bar very, very high. We demanded all of our students stay for 5 years and get a bachelor's and master's degree. And I have to admit to you that I was one who was fearful that we had just put ourselves out of business. Why come to the University of Connecticut with all these requirements, 5 years rather than 4 years, and so on, when you can go someplace else and get a degree much easier and much quicker? And I was totally wrong. Students have flocked to quality. Students these days have lots of options on what to do in their professional career. They are not going to go into education if it is easy, if it

is not seen as a profession, if it is not challenging. We are attracting students from all over the country who want to come to our program. Our students are equal to or better than every other students in any other program in our university. Our students in terms of grade point average, in terms of SAT scores are comparable to chemistry majors and psychology majors and English majors and so on.

So raising the bar, saying education, special education, as we have heard from this panel, is a tremendously demanding job. This is not for the faint-hearted. Unless we train people to meet the demands that you have heard talked about here, IDEA, with its many very productive pieces, will not succeed.

So to specifically respond, our internship has proven to be the most effective piece of the program. In their master's year, they spend 20 hours a week in the schools. This is after student teaching. They are acting as change agents and leaders. Our students learn how to be professionals, experience the professional role, are treated like professionals before they leave our institution. All of the follow-up data we have done has indicated that is the best piece.

Another piece is the fact that all of our students have extensive experience in inner-city schools. As Senator Dodd can tell you, we are out in the country out in Storrs, and yet we have made collaborative arrangements with the Hartford schools and other schools so that our students have learned to deal with the diversity, have learned to deal with other cultures, and as the data indicates, have been so excited by the opportunities that are afforded in those inner-city schools that 50 percent choose—and I mean choose. Our students can work anyplace they want. They choose to work in inner-city schools.

So one other piece in terms of philosophy is the idea of self-determination. It relates to what was talked about in terms of transition. As Senators, you understand self-determination in terms of politics and countries and other places. Self-determination relates to students being given control of their lives so that doesn't happen.

Thank you.

The CHAIRMAN. Mr. Gordon, I know there is a schedule conflict, so I will ask any of our panel have specific questions for him, feel free to ask them. One that I am particularly interested in is: How do you envision including the students with significant disabilities, such as with severe cognitive disabilities, in an accountability system? You have given us a very interesting description about what you have done earlier, and these are things which I think are absolutely necessary. And then how do you deal with those who are—that 9 percent, I guess, that is left behind?

Mr. GORDON. Well, what we do in our system is we ensure that every student is assessed, and I mean every student. In our system, 52 percent of our special ed. students are able to take our regular State assessment; 15 percent take the regular State assessment with accommodations. And we push to do that because we want to make sure parents know where their students stand. Twenty-four percent are assessed through alternative measures, which are placed in the IEP, which the parent agrees upon, be-

cause we are out to be accountable, we are out to help students, as Mr. Gloeckler said, have a productive life after they graduate. And that is our commitment.

The CHAIRMAN. Yes, Senator Dodd.

Senator DODD. I just have a quick question for you, Mr. Gordon. I was struck by your concerns about paperwork. This is not an uncommon complaint about almost any Federal program. But I am curious about some of the redundancies.

We often hear that the requirements may result from over-caution by school districts in response to a lack of clarity about what actually is required, rather than the Federal requirements themselves.

Could you give us some specific examples of redundant paperwork?

Mr. GLOECKLER. Yes. I think part of the extra paperwork comes from districts which are not compliant, and the State then ramps up the compliance requirements on everybody.

We had a review a couple of years ago, and there were a few pages which were not signed. So that was a compliance exception, something was not dated, that kind of thing. But I believe that we are asking about the wrong things, and we are wasting a lot of people's times. Let me give you one specific example.

In the 11 years that I have been in this school district, we have not had one single due process hearing. Not one, and it is a district of 50,000 students. But guess what? Nobody ever asks us about that. So, to me, the compliance isn't oriented about asking the customer, Are you satisfied with the services? It is about checking this, that, and the other thing. So I think we are missing the boat there.

Senator DODD. That is a very interesting point.

Thank you, Mr. Chairman.

The CHAIRMAN. Anything else of Mr. Gordon?

Senator REED. Mr. Gordon, when you speak to administrators and to parents, you hear about two different systems. The administrator is talking about one that is overly regulated, overly bureaucratized, et cetera. Parents, on the other hand, essentially have to fight for any service they get for their children, and if they are not articulate and educated, the battle is probably impossible. This suggests that at least the perception of parents is that administrators are not actively trying to make the system work for children and parents. To get the education for their children, that is an effort that parents have to make.

I don't know where the truth lies.

Mr. GORDON. I think you make a good point, and one suggestion I would have is that we should ask parents what they think, we should ask the customer what they think of the services.

One other suggestion I would have. The whole adversarial relationship that gets built up between the system and the parent I think could be helped a lot with some requirements for the IEP meeting, which is the parents' first encounter with the system, to have that heavily facilitated, have someone who is really trained. We use a system called intraspace bargaining for our collective bargaining, and it is very carefully—the person facilitating is very carefully trained to get to a win-win so that the parent meets the

system in a positive way so that they are working toward a solution. Too often now, attorneys come in and this and that. I think that could make a big difference.

The CHAIRMAN. Senator Clinton.

Senator CLINTON. Well, I didn't have the benefit of hearing Mr. Gordon's testimony personally, but I have read it and I am very impressed by what you have accomplished in your district. I hope as we move forward with this process that your common-sense experience and examples can help guide us, because clearly what we are trying to figure out, as Senator Reed said so well is, how we remove the adversarial conflicts, focus on outcomes for each child, and create the smooth transition process that Commissioner Gloeckler talked about. So I appreciate what you have already done to show us the way.

Mr. GORDON. Thank you very much.

The CHAIRMAN. Just one question, Mr. Gordon. Do you believe the overemphasis on process and the underemphasis on student progress is anecdotal or endemic? Do we need to change the statute or regulations in order to reorient special education to focus primarily on student achievement?

Mr. GORDON. Well, I think the compliance system does need to be unpacked and repacked to make sure that what is in there is both necessary but also are we asking the right questions. I think we can and should increase accountability for student outcomes. Getting rid of the paperwork will allow more time to focus on that.

The CHAIRMAN. Maybe we can be back in touch with you about the kind of changes that ought to be made.

Mr. GORDON. Yes. Happy to help. Thank you very much.

The CHAIRMAN. You are excused. Very, very helpful.

Ms. Brown, I wanted to talk to you just about your child a bit, if we could, about sort of at what point do you think the school should have been addressing your son's transition needs, how could they have been more effective, what should they have emphasized? In retrospect now, what could we learn from this experience?

Ms. BROWN. Yes, sir. Actually, a principal in the school that Paul was attending in fourth grade began addressing his transition needs, except that he was ready to relegate Paul to something that was not going to focus on the academics but was going to focus on a functional curriculum. I said that it was not about some kind of white-collar notion that my son had to attend Harvard. I was really open to all of my children really choosing career goals that were fulfilling to them. But we know in today's society and today's work environment you must have some kind of postsecondary education.

So that was an early address of transition, but it was one that really, again, what other panelists have talked about, focused and had an underestimation of the ability of students who have been found eligible for special education.

I think for my son, because of his needs and because he was a tremendous challenge behaviorally to the school system, the needs were continuously focusing on his behavior. I think it is very interesting that we compare what schools are willing to focus on for students with physical disabilities. They are very clear that related services are not to cure a child of their inability to walk. They are

only to improve the efficiency of their ability to benefit from academic instruction.

When we look at children with behavioral disabilities, who I think end up being really the hot focus around reauthorization, our experience has been that the effort has been to change his disability. I recently went through all of Paul's school records in preparation for some additional vocational testing by the adult service system, and I was struck again at the continual efforts to change his behavior, to extinguish his impulsivity, to completely extinguish all of the inappropriate things that Paul will ever say. That is really unreasonable. While certainly, especially today, when I go to an airport with Paul, we do a lot of preparation around what not to say. You know, I don't even tell him nowadays to write it down. That used to be a strategy. It is just like: Hold it. Hold your thoughts until we are home.

So it is not that, again, I would like Paul to be kind of 100 percent on that, but he is not able to. He still says really big gaffes. They become bigger the bigger he is. He is a big fellow, and I think is sometimes intimidating. So I think that is another area where we have to, again, focus on not extinguishing those behaviors and really focus on the academics.

Then we look at the piece that was brought up by Mr. Gloeckler around, well, what are the other agency responsibilities? On the one hand, as a parent I feel very comfortable that the buck stops at the Department of Education in terms of transition, because somebody has to take that ultimate responsibility. But we end up with a State-by-State, how much are States willing to spend on services for adults with disabilities. I think that is where the unevenness comes, because there just are no services. Actually, for my son Paul, I will be very happy if we get some job support services for him. At the time if our family were to be all killed or whatever, Paul would probably be homeless very quickly because the level of his disability does not bring him to the top of the very long waiting list. Those are State resources. I don't know what the Feds can do about that other than, again, if there is some type of incentive package that can be provided to States.

THE CHAIRMAN. I have just two quick ones. Ms. Mayerson, you mentioned that States should be sanctioned for noncompliance. Could you outline quickly what sanctions do you suggest to bring States into compliance?

MS. MAYERSON. I think it is very important, as other witnesses have said, that the States be held accountable for outcomes. I am happy to report that there is a group of stakeholders that are meeting regularly and coming up with—and I believe, yes, Mr. Gloeckler is one of the people on that committee—to come up with a focused monitoring plan which would really focus on outcomes.

The important thing about focused monitoring is not only the focus on outcomes but that there are specific benchmarks for compliance so everyone knows what the standards are and that there are triggers so that sanctions will be applied if certain triggers are not met. I think it is going to be much easier for States to understand what the rules are and hopefully for the Department of Education to be able to institute some of its sanctions.

I would like to add, though, that in addition to focused monitoring, we are very specifically proposing that the Department of Justice come into this field, like in every other area of civil rights law. And we are suggesting a corollary to the 1964 Civil Rights Act where students and their parents were able to bring complaints directly to the Department of Justice in desegregation cases. We would like the same kind of authority in the IDEA.

The CHAIRMAN. That is very helpful.

Finally, Mr. Gloeckler, you mentioned that New York uses a performance-based approach. What type of performance measures does New York use? How does it measure the outcomes for children who have more significant cognitive disabilities or who are mentally retarded?

Mr. GLOECKLER. Well, we do have a performance-based approach, and it is based on what we think are key performance indicators, which means that we have had to whittle down to what we think are the most significant issues, and that is what we focus our own accountability measures on. That includes achievement. It also includes things like attendance. It includes things like dropouts, disproportionate placement of minorities in special education, transition issues, and there are others. There are 14 all together.

We include all of our children in our accountability system, including the most significantly disabled. We have implemented this year for the first time the alternate assessment for children with more severe disabilities.

By the way, I want to congratulate you for that provision in IDEA, because for the very first time in New York, and every other place in the country, parents who have children with severe disabilities now have access to knowing about whether their programs are meeting standards and whether their children are being educated to a standard. I think that is very important for all parents to know.

So I think performance-based approaches are much more effective than procedural-based approaches. Procedures are important, but only if the outcomes occur. So I think you can apply performance-based approaches to any child and to any system, and it is a much better way of measuring it, and the public has a much better understanding then of what is actually happening with their children.

The CHAIRMAN. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman. I am going to try and keep an eye on the clock.

Mr.—is it “Glecker”?

Mr. GLOECKLER. Gloeckler. Too many letters in my name, I know that. [Laughter.]

Senator DODD. I was curious about the figure that you cite in your written testimony that 80 percent of the students with disabilities have work experience. I am curious about the kind of work experience they get, and especially as we will need a more educated workforce in the 21st century, how those work experiences relate to the changing economy and how those numbers compare with work experiences for children without disabilities.

Mr. GLOECKLER. First of all, I think sometimes we think of work experience as being instead of academic growth, and I think you

can combine the two very well. I think it is important that we do that so that the work experience is really career preparation, not simply work.

Again, we believe that any person—and, again, I am State Director of Vocational Rehabilitation. We believe that any person can work and do meaningful work. There is no person that can't work. There are very few, literally. So we have to be about preparing most of our students, either after or if they don't go to postsecondary education, to work in a meaningful career.

Those work experiences we find—summer work experiences which are not available to very many students, quite frankly—are very, very helpful; work experiences through school but not necessarily in the school. We find as students who are not going to go to postsecondary education that they are very, very much more likely to be successfully employed if they have those work experiences under supervision.

Senator DODD. That goes right to Ms. Brown's concern for her son Paul.

Ms. BROWN. Right, but I think also because there has been some discussion about students with significant disabilities, too many of those students in school through 22 getting services, those services are being delivered in the school buildings.

Senator DODD. Right.

Ms. BROWN. Those are not appropriate places, so they end up literally—in Fairfax County, they are baking cookies and cakes for other school functions rather than being put out into the job market where there is real work and something that can be meaningful.

Senator DODD. Which is what you do, Mr. Gloeckler, they are in real—

Mr. GLOECKLER. That is what we recommend strongly, that the work be real work, meaningful work, and in a real environment.

Senator DODD. That 80 percent, how much of that is, as you say, "real work"?

Mr. GLOECKLER. Well, I am not exactly sure where the 80-percent figure you are using is coming from, but for the more severely disabled students, we do not have the opportunities that we believe should be available. In fact, this is where I do believe we need more help from other systems and more help from a community-based approach.

Senator DODD. Thank you.

Dr. Shaw, again, thank you for your testimony and your work over the years. I am glad to hear you say how attractive you have made the academic discipline, the admission standards, and the academic requirements at your department at the University of Connecticut. What did the State do to encourage this? Was this an internal decision made at the university, or was there also support from the State?

Mr. SHAW. It is both. The university made its own decision in terms of running its program, but the State did an Educational Enhancement Act in 1990 that was a major part of this, where for the first time the State committed moneys to school districts to raise teacher salaries. As you know, we have some of the highest teacher salaries in the country, and that was as a result of State involve-

ment in terms of trying to raise the profession. At the same time, they provided various inducements to new teachers. In addition, they provided raised standards, test scores and grades. They provided for increased certification requirements, and they also—it is the best program. It is an induction program to support and evaluate teachers in the first couple of years.

So, yes, it is a comprehensive process, and in this case, what the State did and what the University of Connecticut did worked hand in hand to do a tremendous job raising what special education could do and what those teachers could do when they left our institution.

What I hear on this panel reinforces that special education, fulfilling mandates of IDEA, is difficult, no question. But the data that I shared indicates well-trained teachers can do that. Well-trained teachers—that data boggled my mind. Well-trained teachers found their load manageable. Poorly-trained teachers don't last and cannot manage.

Senator DODD. I know that this isn't specifically your area, but I am curious about how to help achieve what Mr. Gordon said that they have achieved in Sacramento, to reduce the adversarial situation. To what extent do teachers play an important role in this area?

To what extent do we help teachers to work with both special and general education students and families to explain what IDEA is about so that we don't have a sense of pitting special education and general education against each other?

Mr. SHAW. I teach a course—Policy, Law, and Ethics in Special Education—dealing with these real-world situations that teachers find themselves in, spending an awful lot of time on helping teachers develop their ability to work with the IEP process and to work with parents in a productive way.

But as you point out, particularly in rural areas—I will give you a specific example, not too far from the university, a school district where there were two autistic twins, each twin was a Mill in that school, in that town. What I see happening again and again—

Senator DODD. Please explain that, a Mill rate.

Mr. SHAW. Yes. Thank you.

Senator DODD. A factor of budgets and tax.

Mr. SHAW. I do a lot of work with the IEP teams in schools across the State. I have been in most of them. There is a problem that snow removal and special education are the only areas that the town can't control in their budgets. It is an ongoing problem where special education is often over budget, and school boards get pressure and school administrators get pressure, and they put pressure on teachers.

Again, it comes down to you have the teacher at the fulcrum between trying to meet the needs of the law, trying to do what is right for the child, and many, many school administrators telling them you can't do this and you can't do that and so on.

That, once again, comes down to, on one side, full funding of IDEA and taking that pressure off of those teachers and allowing this process to work, and also having teachers who have the skill to deal with this very, very challenging interpersonal and professional situation.

Senator DODD. Thank you very much. There has been no stronger champion of this than our colleague from Vermont, so let me turn to Senator Jeffords.

The vote starts at 11 o'clock. We will probably go a little bit over so that everyone gets a chance to speak. I apologize for going over. Those are very important answers.

Let me go to Senator Jeffords, then you can—I apologize, Ms. Mayerson. Go ahead.

Senator JEFFORDS. I am going to ask you a question, anyway, Ms. Mayerson, so you can—

Senator DODD. You can give any answer you would like to any question that was raised.

Senator JEFFORDS. Answer his first. [Laughter.]

I was one of those that, as you know, originally wrote the bill and, thus, was there when we went through the legal process of examining the court cases, and then we had established the constitutional right to a free and appropriate education. What concerns me is that we don't seem to see that being used in an effective way to get much more rapid compliance with a free and appropriate education, and I wondered what it is we need to do to try and have it broadly ensure things and court-enforceable things. Can you give me an answer as to what we need to do?

Ms. MAYERSON. Well, I think all the things that have been talked about today are incredibly important. I was particularly focusing my remarks on enforcement. I do believe that there should be an enforcement system that the school districts and the States know what it is, they know what they have to achieve, and they know that they will be held accountable.

As it is right now, the monitoring by the Federal Government takes place, certain things are found out of compliance review after review after review after review, and nothing is done. So I pose the question to all of us: If we got tickets for violating the 55-mile-an-hour speed limit and no one ever came to collect and it happened over and over and over again, how effective would that law be? So I think enforcement is really key.

I think it is incredibly important to have knowledgeable teachers, and I want to just for a minute go back to Rachael Holland. The difference between well-trained teachers and teachers that were open, receptive, and excited about teaching Rachael and the teachers who really didn't know anything about the field caused not only a difference in her being welcomed, but also in how much they thought needed to be done. Because it is often the people with the least education that are less prepared who think that it is going to be this tremendous burden. Then you have a well-trained teacher, and they know exactly what to do.

So you have this situation with Rachael, where from kindergarten on, the school district was saying she was disruptive, she was not able to learn, she was retarding other children. Then you have positive, educated experts that come from programs like Mr. Shaw's, and they are saying she is an exciting student to teach, she has got all kinds of potential, her behavior is wonderful.

So I think it is really, really key that the administrators, of course—and we have very good ones here—lead the charge in terms of the attitude that people are going to have in the district.

The teachers being prepared makes a tremendous difference. Then in the final count, it is a civil rights law, and it has to be enforced like a civil rights law.

Senator JEFFORDS. Well, how do we enforce it like a civil rights law?

Ms. MAYERSON. Well, we spoke about changing the monitoring system. It seems like there is a lot of agreement to focus on outcomes and to make the Department of Education follow through when it finds a district in noncompliance, actually follow through with sanctions.

One of the sanctions that is currently in the law is partial or total withholding of funds, and that has historically been a sanction that is just never used.

In 1997, we put in another sanction which was referring cases to Justice from the Department of Education. Actually, that has never been used.

I think both of those need to be bolstered, but I think there is another thing that I am proposing in my testimony, and that does come directly as a corollary from the 1964 Civil Rights Act, and that is to allow parents who have systemic complaints that affect classes of students in their districts to go directly to the Department of Justice with their complaints. I think that would very much emphasize the civil rights nature of the law, that the complaint would not necessarily get caught up in quite as much bureaucracy as what happens in the Department of Education, and that parents would not be so dependent on agency effectiveness in order to make sure that their children's rights were being pursued.

Senator JEFFORDS. Let me go just one step further on that, and that is, we now have underfunding; we have what we promised and underfundings, which the States, I guess, are obligated to provide. How do we enforce that? What should we do here to make it possible for the courts to get in and say, "Hey, State, you are not spending the money you are supposed to for an appropriate education, do it."?

Ms. MAYERSON. Well, I think that, of course, everyone on this panel I think would agree that more money would be better, and there is no question about that, and I know this is being considered.

But I also think that when you have a civil rights law, you have procedures to measure, you have benchmarks, and then you have triggers for enforcement if the benchmarks aren't made. I think the thing about focused monitoring is that at least the benchmarks are clear. Students have to be treated in a certain way and have certain outcomes, or you are going to have to pay a penalty, or you are going to have to correct your action without paying a penalty. But something has to happen.

What we have right now is chronic noncompliance in certain areas.

Senator JEFFORDS. I know, and that must be very, very frustrating. It is for us. I want to figure out how we can make it painful not to act.

Mr. Gordon, do you have any comments?

Senator DODD. Mr. Gordon is not here. This is Mr. Shaw.

Senator JEFFORDS. Oh, I am sorry. Mr. Shaw.

Mr. SHAW. Follow the money, I guess is the—if it did not cost more money for school districts to serve students, they would do a whole lot better job. So if IDEA was fully funded, Part B, then the pressure on school personnel not to provide services would be released, and good personnel working with parents at those IEP meetings could meet all the requirements and provide for positive outcomes. But the issue right now is the fiscal issue, and in terms of in a regulatory way, I don't know how you deal with that because it is done from word of mouth from the administrator to the school personnel not to provide free appropriate public education because it costs money.

Senator JEFFORDS. Mr. Gloeckler.

Mr. GLOECKLER. Yes, I just want to make a comment because I receive monitoring in New York State, and we have issues that are longstanding and we acknowledge that. In fact, we tell everybody else about it.

What has not happened up until now as part of the monitoring process is the offer of support to resolve the problems. In other words, problems are identified. People leave it up to the situation that was already there in order to resolve it. And you, through the IDEA, provided tremendous resources and research and technical assistance that is scattered all over the place right now, but not targeted to the problems that have been identified. New York would be very supportive of, if you find a problem, that is fine, let's fix it; but come in and help us with resources and technical assistance and research and expertise to get the problem resolved.

So I think targeting the resources available in IDEA to the problems that have been identified in a very focused way that is strategic and is based on accountability will, I think, make a great deal of difference.

Ms. MAYERSON. Could I just add one thing to that?

Senator JEFFORDS. Certainly.

Ms. MAYERSON. In contrast to that, in California the Federal Government has found California out of compliance on several issues for many years. There has been a tremendous amount of technical assistance that has gone from the Federal Government to the State, but there hasn't been compliance. I think that until the States really take compliance seriously, meaning that they know something will actually happen, you are not going to have States come into compliance.

I think that it is very important to have technical assistance. I think it is very important to have capacity building. But at the end of the line, there has to be a consequence. It is just the same as any other law.

Senator JEFFORDS. Thank you.

Senator Reed.

Senator REED. Thank you, Senator Jeffords.

Mr. Shaw, you have described a very progressive and effective program that includes clinical training and involvement in urban schools, not, the typical upscale suburban school, which has been very effective. It seems so obvious to me that that is the way to proceed. But I would guess you are the exception to the rule, that most schools of education are locked into a 1950s approach to training teachers to go into 1950s classrooms with, you know, Mom and

Dad and the nuclear family and special education children not even in the classroom.

Can you comment on that?

Mr. SHAW. I wouldn't quite put it that way. But, yes, I think you are correct. The program we put together, it took 5 years of effort and debate and difficult times. It is very, very difficult to implement this kind of program. It requires us faculty to get out into these inner-city schools. It has required major, major efforts on the part of many folks, and even though the literature talks about internships and professional development schools and 5-year programs, very few places have been able to put them into place, and those that have put these into place—they talk about they have professional development schools. They really don't have the kind of activity that will provide for the simultaneous renewal I was talking about.

So you are right, we are rare. And it is difficult. The State, as most States, is in fiscal difficulty. I had a special education position that was yanked from me a day before I was going to bring people in to hire. We have been understaffed in our special education program chronically for the last 6, 8 years.

So this program is very labor-intensive on the part of faculty. It costs very much more than the typical program. My institution tells us certify more teachers but you have no more resources. And so, once again, I really urge you to increase Part D funding, increase requirements that programs have these kinds of strong elements in place, because everything I have heard here today reinforces that IDEA can work but only if you have very, very well-trained, skilled teachers.

Senator REED. Well, I share your conclusion, and I think it is shared by most of the panelists, if not all of them. In fact, my view is that the greatest lever we have is professional development, because, otherwise, it does become simply a bureaucratic chase to find the services and the right teacher and the right everybody who is sensitive to the needs of the child and the responsibilities. I hope we can follow through.

Ms. Mayerson, do you want to respond?

Ms. MAYERSON. I just wanted to add to that—and I don't know if it was clear—that you also, of course, need to work with the regular ed. teachers and have crossover programs with regular ed. teacher training to make sure that those teachers are familiar with the children and the learning and the educational strategies.

Senator REED. That was my question, too.

Mr. SHAW. Yes, our program is called an integrated bachelor's/master's, and the integrated is—the student's secondary, elementary, and special education are integrated in course work, in seminars every single semester for the 3 years, faculty of special education are teaching general education students and so on. These folks are learning what the other deals with, and these folks are learning to work with each other over the course of 3 years.

Our general education students are also—and, again, we have some pretty good data—are also much more able to deal with and are much more willing to work with these special education students when they are in their classrooms.

Senator REED. Just a quick follow-up, Mr. Shaw. Again, I think what you are doing is probably the exception to the rule of most college or teacher preparation schools in the country.

Mr. SHAW. Right. But, again, I do want to differentiate. A lot of places do have dual certification, and I want to indicate personally that is not what I am talking about. I am very concerned when we have dual certification, which has been the route that many places have gone to try to deal with this. Because special education is more challenging and more difficult, dual certification may mean we are training pretty good general education teachers, but we are not training folks who are staying in special education and committed to special education as we are.

Senator REED. Just a quick comment, because the time is expiring—or has expired. It goes back to the perception of the litigious nature of IDEA, and your testimony and the materials you submitted, Ms. Mayerson, suggest that, and Mr. Gordon indicated that in his district there were no due process hearings over several years. We have this image, and, in fact, this law is attacked by many people as just an invitation for lawyers to make money off of school systems.

Ms. MAYERSON. I don't know any real rich special ed. lawyers, I have to tell you.

Senator REED. But you realize that is the perception that is out there, and part of this reauthorization will be to deal with that perception. So I appreciate your data.

But, also, I think we have to be conscious about trying to do things that aid parents to get services for their children without availing themselves of a lawyer. Mr. Gordon suggested earlier intervention. Ms. Brown, you might have a comment.

Ms. BROWN. I think about the litigation, I mean, in all the years that we were working with the school system, we actually could have gone to court on many issues. We probably had more resources than most people to do that. But we didn't because it is a big step to do. It really oftentimes does not help. We even had a situation where our son and other children in his school were being categorically denied the ability to run for student government, and another time where none of the children in the BED program were going on the trip to Philadelphia. The principals passed that on to the teachers, and rather than—I think I had a legitimate right to go to the Office of Civil Rights. I actually figured, What are they going to do? They are going to sit down with these people and have a meeting, and basically I did that. I brought in a colleague. We sat down with the people who were responsible, and we discussed what is going to be their corrective action plan, which I understand that has been corrected.

So I think while we talk about what could be the litigious nature, I think we have to also realize that there are many, many, many more instances where people are trying to work things out or, in the case of people who just don't have the emotional resources, are kind of letting it go.

Senator REED. I want to yield back my time. My colleagues have been most kind.

Senator DODD. Senator Jeffords had another question.

Senator JEFFORDS. I would like to ask Mr. Gloeckler about the Ticket to Work. How do you see that working in our schools? Is it? What do we need to do, if anything?

Mr. GLOECKLER. It is not working now in the schools. I believe the rules—you know better than I do, but the rules are, I believe, starting at 18. I think it should be younger than that. I think it is a missed opportunity to basically reinforce the idea that schools educate children to be prepared for work, and if we can do that well and have the students then move on to meaningful employment and not benefits, then the school should be rewarded with that reimbursement just like any other employment entity would be.

So I think we should revisit that whole thing.

Senator JEFFORDS. What would you suggest, 16, 14?

Mr. GLOECKLER. You know, picking magic numbers is very hard, I have to say. I wish that what we could do is say let the decision be made collectively by the parents and the school as to when the child is ready to begin that journey into career preparation. But it would certainly at least be the age of, I would say, 15, 16, perhaps 14, depending on the student.

What I don't want to see happen and I would really hope that if this—if you look into this, that you craft it carefully, that we are not having students tracked into an employment program inappropriately when they should be moving on to postsecondary education and higher academic standards.

So I think there is that thing that has to be carefully crafted, but I think you can do that.

Senator JEFFORDS. Well, I would like to work with you further on that. I am on the Finance Committee, so I have an opportunity, and I also sponsored the bill.

Mr. GLOECKLER. We would love to do that.

Mr. SHAW. Can I make a suggestion?

Senator JEFFORDS. Yes.

Mr. SHAW. If you tied that into the transition planning process, which is clearly timed, and just put that into that process and say the transition planning team can use Ticket to Work, that would, I think, do a wonderful job.

Senator JEFFORDS. Thank you. Thank you very much.

The CHAIRMAN. We are now in the process of—Massachusetts is one of the States now implementing Ticket to Work, and it is just working well up there; seeing the additional kinds of possibilities and tying it into here will make a big difference. I don't know why it took us so long to get that, Senator Jeffords, who was the leader, and others, Senator Dodd. So it is something we want to try and—these are good, helpful suggestions on that as well.

We want to thank you all. It has been very, very helpful. I think what you have done is given us some very important recommendations. We are going to be back in touch with you. We wanted to let you know that this door is wide open, and as you see this taking shape and following it, we want your recommendations and suggestions. Don't just wait until we pound on your door. Just submit them to us here, to me, to any of our Members, and our staffs, because we have a very good panel here that have thought about this and have seen what is working out there. And we want to benefit

from this extraordinary experience and get this law as correct as we possibly can.

We thank all of you, and the committee stands in recess.

[Whereupon, at 11:05 a.m., the committee was adjourned.]

PREPARED STATEMENT OF NANCY VERNON

The following recommendation is intended to provide equal protection for students with disabilities in cases where there have been procedural errors made by a public entity affecting a child's ability to receive a free appropriate public education and the least costly grievance procedural requirements have been attempted. In cases involving disagreements with educational placement, types of services, etc. or requests for a due process hearing made by the public entity, the issue of parental/guardian legal fees paid at public expense needs to be further explored.

Recommendation for improving compliance: The people of the United States of America believe that no state be allowed to "deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws." Laws have been established by Congress to protect the rights of children with disabilities to achieve the following:

(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

Children with disabilities as defined in 34 C.F.R. Part 300 shall be provided equal protection to receive an appropriate education at public expense as guaranteed by the Fourteenth Amendment. The term Free Appropriate Public Education, or FAPE, is defined as special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet standards of the State educational agency, including the requirements of this chapter;

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformance with individualized education program (IEP) requirements of this chapter.

In the event that a parent, guardian or other believes a child with a disability is being denied a free appropriate public education, it is written in Federal law that a child be entitled to receive due process of law. The Federal provisions defining the Individuals with Disabilities Education Act, or IDEA, provides measures to ensure each child is afforded his or her due process rights. The procedural safeguards have been established; however, children with disabilities are still being denied their constitutional right to receive an appropriate education at public expense. The laws established to protect the rights of children with disabilities are not lacking in explanation or clarity, nor does ignorance of the law play a significant role in preventing a child from receiving his or her entitlement. It has become apparent that the laws protecting children with disabilities, at times, are literally and flagrantly ignored or disregarded, and it has become common practice to ensure enforcement and implementation of the law through the litigious process for those able to financially support the legal fees incurred as a result of retaining legal representation. A child's economic situation is the determining factor of whether he or she will receive an appropriate education at public expense, and should a child's parent(s) or legal guardian(s) have the financial support to initiate the litigious process, then it could be argued that a child is not receiving an appropriate education at public expense. The cost incurred could be astronomical, due to the high cost of legal representation and the limited availability of free or low-cost attorneys. Even though parents are legally able to initiate and proceed with a due process hearing without legal representation, it does not afford the child with fair representation, due to the fact that most parents or guardians are not legal experts and the public agency being challenged can and will most likely retain appropriate legal representation afforded at public expense.

In order to ensure that a child with a disability has appropriate legal representation and provided equal protection of the laws, it is necessary to establish legal guidelines that will afford a child appropriate legal representation should the need for a due process hearing be necessary to enforce and implement the laws protecting the individual rights of a child with a disability. It shall be written into law that a parent(s) or guardian(s) may request the public entity to pay for their legal representation in the case a due process hearing is initiated; however, this request shall be made in writing and not until after the parent(s) or guardian(s) has filed a citizen's complaint with the State Educational Agency, or SEA, in accordance with Federal and State law, and if the SEA found the district to be non-compliant, ordered corrective action, and then before or after the complaint process the parent(s) or guardian(s) attempted to resolve the dispute through mediation, and still the district is non-compliant with the ordered corrective action and/or the mediation agreement, a parent can then require the public entity pay their attorney fees to ensure the child is fairly represented. And the public entity shall pay for all reasonable legal fees as the fees are incurred by the parent(s) or guardian(s), rather than being dependent on the Administrative Law Judge's order that the public entity pay the prevailing parent's or guardian's legal fees as defined in 34 C.F.R. Part 300.

In no event shall this requirement prevent a parent(s) or guardian(s) from requesting a due process hearing at any time; however it is necessary that the least litigious and costly procedures be initiated first to ensure effective and efficient use of public resources; therefore the legal fees shall be awarded only after the parent or guardian has attempted to resolve the dispute by using the citizen's complaint process and mediation process.

